

DISCUSSION ITEMS

Minute Action

AGENDA ITEM: 15

Date: April; 1, 2009

Subject: Master Cooperative Agreement between San Bernardino Associated Governments and Omnitrans

Recommendation:* Approve Cooperative Agreement, C09188, with Omnitrans for the Design, Construction and Administration of the E Street Corridor sbX Bus Rapid Transit Project

Background: In February, the Omnitrans Board of Directors adopted a Refined Locally Preferred Alternative (LRPA) of the E Street Corridor sbX Bus Rapid Transit Project. During March 2009, Omnitrans is expecting the receipt of the Federal Transit Administration's review and concurrence of the Refined LPA prior to completion of the Environmental Assessment and the 2009 Small Starts submittal in September 2009. This project is expected to be fully operational by 2012.

The purpose of the attached agreement is to set forth a mutual understanding between SANBAG and Omnitrans of the terms and conditions relating to the schedule and extent of SANBAG's commitment to Omnitrans and this project. Following is the detail of SANBAG's commitment:

1. To the extent that such funding is available, SANBAG shall provide local match funding as proposed in the Short Range Transportation Plan from 2008 – 2012 in the form of \$13,314,451 in LTF Funding and any other identified appropriate funding source; and

*

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

2. To the extent such funding is available SANBAG will approve the use of \$11,270,981 in Proposition 1B funds and \$5,000,000 in STIP funds; and
3. To the extent such funding is available, SANBAG will provide the local match funding as detailed in the Short Range Transit Plan from 2008-2012, \$11,270,981 in 2010-2040 Measure I Valley Express Bus/Bus Rapid Transit Funds.

Financial Impact: This item has no financial impact on the SANBAG Budget. This item will affect future allocations and use of funds, but all are subject to availability and approval by SANBAG Board.

Reviewed By: This item was scheduled for review by the Plans and Programs Committee on March 18, 2009. However, due to time constraints the item was not heard and is being presented directly to Board.

Responsible Staff: Beth Kranda, Transit Analyst
Michael Bair, Director of Transit and Rail

SANBAG Contract No. C09188

by and between

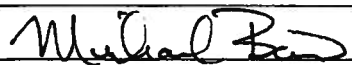
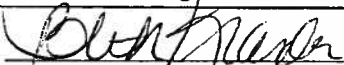

SANBAG

and

Omnitrans

for

Cooperative Agreement between SANBAG the for Design, Construction and Administration of
E Street sbX BRT Project

FOR ACCOUNTING PURPOSES ONLY				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>C09188</u> Vendor ID <u>Omnitrans</u>	Retention: <input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment	
Notes:				
Original Contract: \$ <u>0.00</u>	Previous Amendments Total: \$ ____			
	Previous Amendments Contingency Total: \$ ____			
Contingency Amount: \$ <u>0.00</u>	Current Amendment: \$ ____			
	Current Amendment Contingency: \$ ____			
Contingency Amount requires specific authorization by Task Manager prior to release.				
Contract TOTAL →			\$ <u>0.00</u>	
↓ Please include funding allocation for the original contract or the amendment.				
Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>31509000</u>	<u>5553</u>	____	____	\$ <u>0.00</u>
____	____	____	____	\$ ____
____	____	____	____	\$ ____
____	____	____	____	\$ ____
Original Board Approved Contract Date: <u>4/1/09</u> Contract Start: <u>4/1/09</u> Contract End: <u>12/31/14</u>				
New Amend. Approval (Board) Date: ____ Amend. Start: ____ Amend. End: ____				
If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:				
Approved Budget Authority →	Fiscal Year: ____ \$ ____	Future Fiscal Year(s) – Unbudgeted Obligation →		\$ ____
Is this consistent with the adopted budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, which Task includes budget authority? <u>31509000</u>				
If no, has the budget amendment been submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No				
CONTRACT MANAGEMENT				
Please mark an "X" next to all that apply:				
<input checked="" type="checkbox"/> Intergovernmental <input type="checkbox"/> Private <input type="checkbox"/> Non-Local <input type="checkbox"/> Local <input type="checkbox"/> Partly Local				
Disadvantaged Business Enterprise: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes ____ %				
Task Manager: Michael Blair			Contract Manager: Beth Kranda	
		<u>3-29-09</u>		
Task Manager Signature		Date	Contract Manager Signature	
		<u>3/29/09</u>		
Chief Financial Officer Signature		Date		

Contract C09188

**E STREET CORRIDOR SBX
BUS RAPID TRANSIT (BRT) PROJECT**

**MASTER COOPERATIVE AGREEMENT
FOR DESIGN, CONSTRUCTION, AND ADMINISTRATION**

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

OMNITRANS

This Master Cooperative Agreement (Agreement) is made and entered into by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG), a joint powers authority established under the laws of the State of California, comprised of the County and each municipality within the County, and OMNITRANS (Omnitrans), a joint powers public transit, on this ____ day of _____, 2009.

RECITALS:

WHEREAS, SANBAG is a joint powers authority established under the laws of the State of California, comprised of the County and each municipality within the County, with its primary purpose to provide for the planning and funding of transportation projects within the County; and

WHEREAS, Omnitrans is a joint powers created pursuant to Section 6503.5 of the Government Code to provide public transit service within the urbanized San Bernardino Valley portion of San Bernardino County; and

WHEREAS, the Omnitrans Board of Directors adopted a Locally Preferred Alternative (LPA) in December 2005. On February 4, 2009 the Board of Directors approved the Refined Locally Preferred Alternative (RLPA) as reflected in Appendix A, Project Description, for the E Street Corridor sbX Bus Rapid Transit Project (Project) and authorized its staff to seek a Funding Plan for the Project to include funding from federal, state, local, and private sources, and to commence with implementation of the RLPA; and

WHEREAS, Omnitrans is expecting issuance of a Record of Decision from the Federal Transit Administration (FTA) for completing an Environmental Impact Statement (EIS) for the construction of the Project described herein ; and

WHEREAS, the Project will be funded, designed, and persistently constructed with the intent that it will be fully operational by 2012; and

WHEREAS, Section 130050.2 of the California Public Utilities Code establishes that the Project shall be designed and constructed by Omnitrans with all funding sources to be identified and secured by Omnitrans; and

WHEREAS, Omnitrans will obtain; all necessary real estate for the Project and procure the BRT vehicles to be used in the operation of the Project.

NOW THEREFORE, in consideration of the mutual covenants and promises as herein provided, SANBAG and Omnitrans do hereby agree as follows:

1.0 PURPOSE OF AGREEMENT

- 1.1 The purpose of this Agreement is to set forth a mutual understanding between the parties of the terms and conditions relating to the schedule and extent of SANBAG's commitment to Omnitrans and the Project.

2.0 SANBAG COMMITMENT

- 2.1 SANBAG shall, to the extent such funding is available, provide local match funding as proposed in the SRTP from 2008 to 2012 in the form of \$13,314,451 in LTF;
- 2.2 SANBAG shall, to the extent such funding is available, approve the use of \$11,270,981 in the form of Prop 1B; \$5,000,000 in STIP;
- 2.3 SANBAG shall, to the extent such funding is available, provide local match funding as proposed in the SRTP from 2008 to 2012 in the form of \$11,270,981 in 2010-2040 Measure I Valley Express Bus/Bus Rapid Transit

3.0 FULLFILLMENT OF COMMITMENT

- 3.1 On or about June 30th, Omnitrans shall submit a requisition for the prior fiscal year to SANBAG for project funds, pursuant to this Agreement. Within 30 days of receipt of the Omnitrans' requisition SANBAG shall pay to Omnitrans the annual amount due for local funding match as described in Section 2.0 of this Agreement.

4.0 INSURANCE REQUIREMENTS

- 4.1 Omnitrans shall require that any contractor providing services with respect to the Project obtain and maintain insurance in accordance with federal requirements and/or Omnitrans' Procurement Policy, whichever is greater. All insurance policies shall name Omnitrans and its directors, officers, employees, agents, and volunteers as additional insured's in accordance with the most recent Insurance Services Office (ISO) form.

5.0 AUDIT AND INSPECTION OF RECORDS

- 5.1 Omnitrans' records, which shall include but not be limited to: accounting records, written policies and procedures, contract files including plans and specifications, original estimates, correspondence, change order files (including documentation covering negotiated settlements), invoices, and any other supporting evidence relied upon to substantiate charges related to the Implementation Phase (all foregoing hereinafter referred to as "records"), shall be open to inspection and subject to audit and reproduction by SANBAG's auditors or authorized representatives to permit evaluation of expended cost. The cost of said audit shall be at the expense of SANBAG requesting the audit.
- 5.2 SANBAG, or any of its duly authorized representatives, upon written notice as provided in this Agreement, shall be afforded reasonable access to all of the records of Omnitrans related to the Implementation Phase and shall be allowed to interview any employee of Omnitrans throughout the term of this Agreement. These records must be retained by Omnitrans for three years following the complete fulfillment of commitments made under this Agreement.

6.0 TERMS OF THE AGREEMENT

- 6.1 This Agreement shall become effective upon the date first referenced above and shall remain in full force and effect until December 31, 2014, or upon the completion of the Implementation Phase, whichever occurs last. For purposes of this Agreement, completion of the Implementation Phase shall be defined as the start of revenue operations.

7.0 SANBAG'S FUNDING COMMITMENT AND PARTICIPATION OF OTHER FUNDING SOURCES

- 7.1 SANBAG's funding commitment pursuant to this Agreement is subject to Omnitrans securing funds from its own resources, the Federal Government, the State of California, and other local funding sources. Omnitrans in its discretion may from time to time change the amounts to be received from its non-SANBAG funding sources.
- 7.2 Any additional funds above the approved project budget secured to enhance the Project shall not be prohibited. If such money is secured, it will be at Omnitrans' discretion, to determine how the money will be used on the project.

8.0 SANBAG INDEMNIFICATION

Except for the active negligence or willful misconduct of SANBAG and any of its boards, officers, agents, employees, assigns, and successors in interest, Omnitrans undertakes and agrees to defend, indemnify, and hold harmless SANBAG and any of its boards, officers, agents, employees, assigns, and successors in interest from and against

all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Omnitrans' employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct of Omnitrans, its employees, agents, contractors, in carrying out its responsibilities under this Agreement.

9.0 INCORPORATION OF ATTACHMENTS or APPENDICES

The following Attachment is hereby incorporated into and made a part of this Agreement wherever referred to as though set forth at length, except where certain portions of specific Attachment have been deleted or superseded by other Sections of this Agreement.

Appendix A Project Description

10.0 ORDER OF DOCUMENT PRECEDENCE

In the event of an inconsistency between any of the provisions of this Agreement and/or the Attachments and/or Appendices hereto, the inconsistency shall be resolved by giving precedence in the following order:

Articles of this Agreement
Appendix A

11.0 ALTERNATIVE DISPUTE RESOLUTION

11.1 Negotiation

In the event of a minor dispute, claim or controversy arising out of or in relation to this Agreement the parties agree to try to resolve said dispute, claim or controversy within five business days. The parties agree to cooperate with one another in scheduling negotiation sessions. If said matter is not resolved within thirty days, either party may request that the matter be submitted for Mediation.

11.2 Mediation

If either party, in accordance with Article 11.1 Negotiation, requests that an unresolved matter be submitted to mediation, the parties agree first to try in good faith to settle the dispute by mediation administered by the JAMS pursuant to its Comprehensive Mediation Rules and Procedures. If either party rejects the mediation determination, within a period of 10 days after such decision is deemed received, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures.

11.3 Arbitration

Any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration, before one arbitrator. At the option of first to commence arbitration, the arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

11.4 Waiver

The parties acknowledge and agree that they are each waiving their rights to resolve disputes in a court and by a judge or jury.

11.5 Allocation of Fees and Costs

The arbitrator(s) may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' of the prevailing party.

12.0. DEFAULT/TERMINATION OF AGREEMENT

- 12.1 Upon determination by SANBAG or Omnitrans that either party has not complied with the terms of this Agreement, both parties reserve the right to notify the other of such noncompliance. In the event that the defaulting party does not cure the noncompliance within 30 days, the other party reserves the right to terminate this Agreement. Reasons for such termination shall be limited to termination of the Project, or non- or late-payment of annual contributions by SANBAG. Termination of this Agreement shall be effected by giving a written notice of termination setting forth the manner in which the other party is in default. Dispute over the facts giving rise to termination under this Article 12.1 shall be subject to alternative dispute resolution, but the right to terminate for such reason shall not be subject to review.

13.0. EVENTS BEYOND THE CONTROL OF EITHER PARTY

- 13.1 In the event that either party to this Agreement, despite its best efforts, cannot for reasons beyond the control of the party, timely satisfy a contingency or condition required by this Agreement, that party shall immediately notify in writing to the other party as to the reasons why the requirements cannot be met. The parties shall meet and confer in good faith to consider the changed condition(s) and its impact on the Agreement. Both parties will work to resolve the problem and if this meet-and-confer process results in a recommended restructured Agreement, representatives of both parties will recommend such changes as necessary to their

respective governing bodies.

14.0 AMENDMENT TO AGREEMENT

- 14.1 This Agreement may only be amended, changed, modified or altered by in writing and signed by each of the parties and approved by the respective governing boards thereof in the manner as required by applicable laws.

15.0 NOTICES

- 15.1 Formal notices, demands and communications among Omnitrans and SANBAG shall be deemed sufficiently given if (i) dispatched registered or certified mail via United State Postal Service, postage prepaid, return receipt requested, as designated in this Section 15.1 (ii) by personal delivery, (iii) express delivery service with written verification of delivery, or (iv) by electronic transmittal including fax transmissions with telephonic verification of receipt. Such written notices, demands and communications may be sent in the same manner to such other addresses as any party may from time to time designate by written notice to the other parties.

Copies of all notices, demands and communications shall be sent as follows:

Omnitrans

Omnitrans

1700 West Fifth Street
San Bernardino, California 92411
Attention: CEO/General Manager

SANBAG:

San Bernardino Associated Governments

1170 West Third Street, Second Floor
San Bernardino, California 92410
Attention: Executive Director

16.0. AUTHORIZED REPRESENTATIVES

- 15.1 The following individuals and their successors are designated by SANBAG and Omnitrans as the authorized representatives of the two parties for implementation of this Agreement, and all correspondence and notices relative hereto shall be considered delivered when received by these individuals at the following addresses:

For SANBAG: **Gary C. Ovitt, President**
San Bernardino Associated Governments
1170 West Third Street, Second Floor
San Bernardino, CA 92401

For Omnitrans: **Durand L. Rall**
Chief Executive Officer/ General Manager
Omnitrans
1700 West Fifth Street,
San Bernardino, CA 92410

17.0. OTHER TERMS AND CONDITIONS

- 16.1 This Agreement constitutes the full and complete understanding between the parties. This Agreement may be modified only through written amendments hereto approved and executed in the same manner as this original Agreement. Each and every attachment to this Agreement is incorporated by reference and made part of this Agreement.
- 16.2 This Agreement shall be governed by the laws of the State of California and the United States of America. If any provision of this Agreement is held by a trier of fact having competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- 16.3 The terms of this Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns, but any assignment must be approved by the other party.

This Master Cooperative Agreement for Design, Construction, and Administration of the E Street Corridor SBX Bus Rapid Transit (BRT) Project is effective on the date executed by both Parties

OMNITRANS

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____
Durand L. Rall
CEO/General Manager

By: _____
Gary C. Ovitt,
President

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Fiona Luke
Legal Counsel for Omnitrans

By: _____
Jean-Rene Basle
Legal Counsel for SANBAG

ATTEST:

By: _____
SANBAG Clerk of the Board

APPENDIX A

PROJECT DESCRIPTION

The *sbX E Street Corridor BRT Project* is a proposed 15.7-mile transit improvement project that will connect the northern portion of the City of San Bernardino with the City of Loma Linda (see Figure 1). The proposed transit route would begin in the vicinity of Palm Avenue and Kendall Drive and terminate at the Veterans Administration Hospital located at Barton Road/Benton Street (see Figure 2). It will provide high quality limited stop service (10 minute headways) at up to 16 station stops, using modern articulated buses. Service is proposed to be initiated by 2011. Stations will be "rapid bus" style stations designed for fast boarding. Local buses will, in most cases, also stop adjacent to the *sbX* stations. The project will operate within existing city streets, in the cities of San Bernardino (north of Interstate (I)-10) and Loma Linda (south of I-10).

Stations - The proposed station locations are planned as follows: (1) Palm Avenue/Kendall Drive; (2) University Parkway; (3) Kendall Drive/Little Mountain Drive; (4) Kendall Drive/Shandin Hills Drive; (5) North E Street/West Marshall Boulevard; (6) North E Street/Highland Avenue; (7) North E Street/West Baseline Street; (8) North E Street/Court Street; (9) North E Street/West Rialto Avenue; (10) South E Street/Inland Center Mall; (11); Hospitality Lane/Hunts Lane; (12) Hospitality Lane/Carnegie Drive (vicinity of); (13) Hospitality Lane/Tippecanoe Avenue; (14) South Anderson Street/Redlands Boulevard; (15) South Anderson Street/Mound Street and (16) Barton Road/Benton Street.

Exclusive Lanes – Approximately five point four (5.4) miles of exclusive lanes are anticipated to be implemented in order to ensure competitive operational speeds and design system characteristics are maintained. Exclusive lanes are currently planned as follows: (a) on E Street, from approximately 10th Street to Hospitality Lane, (b) on Hospitality Lane, from E Street to Tippecanoe Avenue, and (c) on Barton Road, from Anderson Street to approximately Benton Street.

Where exclusive lanes are not proposed, buses will operate in mixed flow traffic (i.e., general traffic). To allow transit vehicles to enter the mixed flow lanes more efficiently and safely, "transition lanes" will be provided at entrances and exits from the exclusive lane areas. Transit Signal Priority (TSP) will also be used at some intersections to enable rapid buses to enter traffic flow more efficiently and reduce travel delay.

Park-and-Ride Facilities – Four (4) park-and-ride facilities are also proposed and will be located in conjunction with the station locations. The following locations have been identified: (1) Palm Avenue/Kendall Drive; (2) North E Street/West Marshall Boulevard; and (3) E Street, north of Court Street (shared parking with Carousel Mall), and (4) In the City of Loma Linda at the south west corner of Redlands and Anderson.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 16

Date: April 1, 2009

Subject: Sole Source Professional Services Contract – Passenger Rail Planning

Recommendation:* Approve Contract 09187 with the firm of Schiermeyer Consulting Services (SCS) for passenger rail planning services in an amount not to exceed \$205,268 as specified in the Financial Impact Section.

Background: A sole source contract is being recommended due to SCS's unique and extensive knowledge of passenger rail operations and recognized that the firm's demonstrated experience is important for the continuation of SANBAG's successful commuter rail program. The current contract will expire on June 30, 2009.

SCS has provided passenger rail planning services to SANBAG since 1989. During that time, SCS has provided advice to SANBAG in the areas of commuter rail operations and capital planning, intercity passenger rail services, charter train service to the Auto Club Speedway and the San Bernardino to Redlands Corridor Study. Most recently, SCS has assisted in the passenger rail portion of the Draft Measure I 2010-2040 Strategic Plan.

*

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

BRD0904b-vlb
35209000
Attachment:
C09187

SCS has provided support to SANBAG on the following activities during the past year:

1. SCS has provided support to SANBAG in its participation with the Southern California Regional Rail Authority (SCRRA). The support includes attending and participating in the SCRRA Technical Advisory Committee composed of staffs from each of the five member agencies and monthly SCRRA Board and Policy Committee meetings. SCS often represents the interest of SANBAG when staff is unable to attend. SCS also provides support to the SANBAG Commuter Rail Committee which meets every other month and provides the monthly Commuter Rail Report that appears in the SANBAG Board agenda.
2. SCS is frequently consulted on issues related to the national and state supported intercity passenger rail service operated by Amtrak. SCS is considered one of the few consulting firms with extensive knowledge of intercity passenger rail operations.
3. SCS has assisted in the development of charter train schedules for the Auto Club Speedway service and coordinates train ticket sales with the Speedway. SCS also works with the SANBAG and SCRRA staff in the charter trains operations planning.
4. SCS has provided assistance with the San Bernardino to Redlands Regionally Significant Transportation Investment Study.
5. SCS has provided support to SANBAG in its participation with the California High-Speed Rail Authority (CHSRA). The support includes attending and participating in the CHSRA Technical Working Group as it develops alignments alternatives through the Inland Empire.

The proposed contract provides for a continuation of the above professional services for the next two fiscal years with the option of two two-year extension. Compensation for the both years of this agreement shall not exceed \$99,534 in personal expenses per year as outlined in Exhibit A. This reflects no increase in SCS hourly rates from their current agreement. Direct expenses shall not exceed \$3,000 in the first year (2010) and \$3,200 in the second year (2011). The increase direct expense reflects a modest increase over the current year. Total compensation for this two year contract shall not exceed \$205,268.

Compensation for Contract options shall be mutually agreed upon and incorporated by amendment to this Contract.

Financial Impact: Funding for the first year of this Contract is consistent with the proposed Fiscal Year 2009/2010 SANBAG Budget under task 35210000. Funding source will be LTF Planning. Funding for the second year will be contingent upon funding approved as part of the Fiscal Year 2010/2011 SANBAG Budget.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Commuter Rail Committee on March 19, 2009.

Responsible Staff: Michael Bair, Interim Director of Transit and Rail Programs
Victoria Baker, Senior Transit Analyst

SANBAG Contract No. C09187

by and between

San Bernardino Associated Governments

and

Schiermeyer Consulting Services

for

provision of professional services related to passenger rail service

FOR ACCOUNTING PURPOSES ONLY				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>C09187</u> Vendor ID _____	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment	
Notes:				
Original Contract: \$ <u>\$205,268</u>	Previous Amendments Total: \$ _____		Previous Amendments Contingency Total: \$ _____	
Contingency Amount: \$ _____	Current Amendment: \$ _____		Current Amendment Contingency: \$ _____	
Contingency Amount requires specific authorization by Task Manager prior to release.				
Contract TOTAL →			\$ <u>205,268</u>	
↓ Please include funding allocation for the original contract or the amendment.				
Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>35210000</u>	<u>5553</u>	<u>LTF - Planning</u>	_____	\$ <u>102,534</u>
<u>35211000</u>	<u>5553</u>	<u>LTF - Planning</u>	_____	\$ <u>102,734</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
Original Board Approved Contract Date: <u>4/1/09</u>		Contract Start: <u>7/1/09</u>	Contract End: <u>6/30/11</u>	
New Amend. Approval (Board) Date: _____		Amend. Start: _____	Amend. End: _____	
If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:				
Approved Budget Authority →	Fiscal Year: <u>2010</u> \$ <u>102,534</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>102,734</u>	
Is this consistent with the adopted budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, which Task includes budget authority? <u>35210000</u>				
If no, has the budget amendment been submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No				
CONTRACT MANAGEMENT				
Please mark an "X" next to all that apply:				
<input type="checkbox"/> Intergovernmental	<input checked="" type="checkbox"/> Private	<input type="checkbox"/> Non-Local	<input type="checkbox"/> Local	<input type="checkbox"/> Partly Local
Disadvantaged Business Enterprise: <input type="checkbox"/> No <input type="checkbox"/> Yes _____ %				
Task Manager: Michael Bair		Contract Manager: Victoria Baker		

Michael Bair 3-10-09
Task Manager Signature Date

Victoria L Baker 3-10-09
Contract Manager Signature Date

[Signature] 3/24/09
Chief Financial Officer Signature Date

C09187-vlb
35209000

CONTRACT NO. C09187

**SAN BERNARDINO ASSOCIATED GOVERNMENTS
and**

SCHIERMEYER CONSULTING SERVICES

THIS CONTRACT is entered into this 1st day of April 2009 in the State of California by and between the San Bernardino Associated Governments, hereafter called "AGENCY", and Schiermeyer Consulting Services (SCS), hereafter called "CONTRACTOR".

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the AGENCY requires certain professional services relating to its commuter rail program and intercity passenger rail planning efforts; and

WHEREAS, CONTRACTOR has skills, knowledge, and the ability to provide such services to the AGENCY;

NOW THEREFORE, the parties agree to the following terms and conditions:

1. CONTRACTOR SERVICES

The CONTRACTOR will be responsible for supporting SANBAG's commuter rail program and intercity passenger rail planning efforts. The CONTRACTOR will also be responsible for the following activities:

- A. Providing assistance in evaluating commuter rail operating and capital subsidy calculations as they relate to AGENCY.
- B. Providing assistance in developing recommended priorities for commuter rail operating and capital projects.
- C. Providing assistance in developing commuter rail capital project applications.
- D. Providing assistance in reviewing the State of California and Amtrak planning of intercity passenger rail services.
- E. Providing technical support to the AGENCY Commuter Rail Committee.
- F. Providing technical support as identified by AGENCY in the area of commuter rail, intercity passenger rail and special trains (such as the California Speedway trains).

2. **TERM**

This CONTRACT will commence on July 1, 2009 and remain in effect until June 30, 2011 (Fiscal Years 2009-2010 and 2010-2011). It may be extended by a written amendment approved by the parties for an additional two years. No more than two such extensions shall be granted.

3. **TERMINATION**

Termination for Convenience. AGENCY may terminate this CONTRACT at any time by serving thirty (30) day notice to this effect on CONTRACTOR. CONTRACTOR shall be paid its costs, including CONTRACT close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to AGENCY to be paid CONTRACTOR. If CONTRACTOR has any property in its possession belonging to the AGENCY, the CONTRACTOR will account for same, and dispose of it in the manner AGENCY directs.

Additionally, in the event of misconduct or failure to perform required services, AGENCY may immediately terminate this CONTRACT by written notice to CONTRACTOR. CONTRACTOR shall not be reimbursed for any services or expenses beyond the termination date of the CONTRACT and AGENCY shall incur no penalty for exercising its termination rights. The Executive Director shall have the authority in his/her sole discretion to give notice of termination on behalf of the AGENCY.

4. **COMPENSATION**

As compensation for the above services, AGENCY shall pay CONTRACTOR an amount not to exceed \$205,268.00 as described below. Compensation and expenses during optional extension periods shall be mutually agreed upon and incorporated by amendment to this CONTRACT.

- A. CONTRACTOR shall account for time spent and invoice AGENCY on a monthly basis. Monthly invoices shall contain both expenditures incurred during the month as well as year to date total by cost category (salaries and itemized direct charges). Each monthly invoice shall be accompanied by a narrative description of work performed.
- B. CONTRACTOR shall be paid at the personnel hourly rates (which include overhead rates) indicated in Exhibit A and shall not exceed \$99,534.00 during Fiscal Year 2009-2010 and \$99,534.00 during Fiscal Year 2010-2011.
- C. CONTRACTOR shall receive reimbursement in an amount not to exceed \$3,000.00 during Fiscal Year 2009-2010 and \$3,200.00 during Fiscal Year 2010-2011 for direct expenses including travel reimbursement and telephone expenses.

- D. Both parties shall mutually agree upon any subsequent adjustment to CONTRACTOR personnel hourly rates as well as the cap on direct expenses.

5. **INSURANCE**

Without in any way affecting the indemnity herein provided and in addition there to, CONTRACTOR shall secure and maintain throughout the term of the CONTRACT the following types of Insurance with limits as shown.

- A. Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises, Contractual Liability, Personal Injury Liability, Broad-From Property Damage and Independent Contractor's Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 aggregate written on occurrence form.
- B. Comprehensive Automobile Liability Coverage, including owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in an aggregate written on an occurrence form.
- D. CONTRACTOR (not including sub-consultants) shall immediately furnish certificates of insurance to AGENCY evidencing the insurance coverage above required. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written notice to AGENCY, and CONTRACTOR shall maintain such insurance from the time this CONTRACT is executed until the completion of such services.
- E. Additional Insured. All policies, except for Workers' Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.
- F. CONTRACTOR shall maintain Worker's Compensation Insurance with limits established and required by the State of California.

6. **INDEMNITY**

CONTRACTOR agrees to indemnify, defend and hold harmless the AGENCY, its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and or liability arising from CONTRACTOR'S negligent acts, errors or omissions and for any costs or expenses incurred by AGENCY on account of any claim therefore, except where such indemnification is prohibited by law.

7. **INDEPENDENT CONTRACTOR**

CONTRACTOR is and shall be at all times an independent CONTRACTOR. Accordingly, all services provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction, and control of CONTRACTOR. AGENCY shall rely on CONTRACTOR for results only and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance of services or as to the manner, means and methods by which services are performed. All workers furnished by CONTRACTOR pursuant to this CONTRACT, and all representatives of CONTRACTOR shall be and remain employees of CONTRACTOR or of CONTRACTOR's sub-consultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AGENCY.

8. **AGENCY AUTHORITY**

AGENCY's Executive Director shall have full authority to exercise AGENCY's rights under this CONTRACT. CONTRACTOR's reporting relationship shall be with the AGENCY's Director of Transit and Rail Programs, unless otherwise directed by AGENCY's Executive Director.

9. **AMENDMENTS**

CONTRACTOR agrees that any alterations, variations, modification, or waivers of the provisions of this CONTRACT, shall be valid only when reduced to writing, executed and attached to the original CONTRACT and approved by the required person.

10. **ASSIGNMENT**

This CONTRACT is not assignable by CONTRACTOR either in whole or in part without the prior written consent of AGENCY.

11. **DOCUMENTS AND DATA**

All plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, spreadsheets, or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of CONTRACTOR under this CONTRACT ("Documents and Data"), shall be made available to AGENCY at all times during this CONTRACT and shall become the property of AGENCY upon the completion of the term of this CONTRACT, except that CONTRACTOR shall have the right to retain copies of all such Documents and Data for its records. Should CONTRACTOR, either during or following termination of this CONTRACT, desire to use any Documents and Data, it shall first obtain the written approval of AGENCY.

12. **GOVERNING LAW AND VENUE**

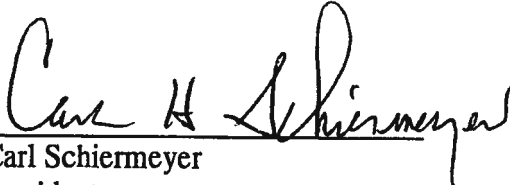
This CONTRACT shall be subject to the laws and jurisdiction of the State of California. The parties acknowledge and agree that this CONTRACT was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this CONTRACT will be the San Bernardino District of San Bernardino County.

IN WITNESS THEREOF, the authorized parties have signed below.

**SAN BERNARDINO
ASSOCIATED GOVERNMENTS**

Gary C. Ovitt
President

**SCHIERMEYER CONSULTING
SERVICES**



Carl Schiermeyer
President

Approved as to From:

Jean-Rene Basle
SANBAG Counsel

Date: _____

EXHIBIT A

Schiermeyer Consulting Services Contract C09187

Fiscal Year 2009-2010

Hourly Rates (including overhead and profit) and Proposed Hours:

Carl Schiermeyer, Principal	\$113.90/Hr.	860 Hrs.
Associate	\$ 65.85/Hr.	24 Hrs.

Fiscal Year 2010-2011

Hourly Rates (including overhead and profit) and Proposed Hours:

Carl Schiermeyer, Principal	\$113.90/Hr.	860 Hrs.
Associate	\$ 65.85/Hr.	24 Hrs.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 17

Date: April 1, 2009

Subject: Amendment No. 3 to Contract 04-058 with Parsons Transportation Group for preparing a Long Range Transit Plan for San Bernardino County

Recommendation:* 1. Approve Amendment No. 3 to Contract 04-058 with Parsons Transportation Group, extending the Time of Performance to September 2, 2009 and increasing the Contract Budget Authority by \$150,094 for a new total of \$721,854 as identified in the Financial Impact Section.

2. Approve Amendment to Task 40409000 – Comprehensive Transportation Plan, increasing the budget by \$150,094 for a new total of \$291,051.

Background: After conducting a competitive procurement process, in June 2004, the Board approved Contract 04-058 with Parsons Transportation Group (PTG) to prepare a Long Range Transit Plan (LRTP) for San Bernardino County. The original contract was for \$300,000 and the work was to be completed by December 2005. In January 2006 the Board approved Amendment No. 1 that amended the Scope of Work to include conducting an on-board survey of the Omnitrans fixed route riders; additional work to produce the Summary of Current Transit Users and conduct a public outreach component. Amendment No. 1 increased the contract authority by \$241,998 for a new total of \$541,998 and extended the time of performance to the end of September 2006. In August 2007 the Board approved

Approved
Board of Directors

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

Amendment No. 2 that extended the time of performance to July 2008 and increased the contract authority by \$29,762 for a new total of \$571,760.

While the project has not progressed as quickly as expected, the delay has provided for additional opportunities to make the end product better. For example, the forecast of revenues that would be available to implement the LRTP has changed significantly over the last four years – the recent elimination of State Transit Assistance and the decline in Local Transportation Fund receipts are good examples. In addition, the passage of AB 375 which is directed at reducing greenhouse gas emissions by reducing vehicles miles traveled through land use and other related policies provides an opportunity for the consultant to work with the Valley cities to identify transit supportive land use decisions that would be acceptable. This work effort will be particularly important for the analyzing the proposed bus rapid transit service.

There is work remaining in the current scope; including the development of two transit network alternatives for the Victor Valley and the completion of the development of the San Bernardino Valley transit network. Most of this work will be accomplished within the remaining budget.

Staff has worked with PTG to identify modifications to the Scope of Work as well as the costs associated with the proposed additional work. In addition to the new task of the consultant working with the Valley cities to assist in developing a transit supportive land use alternative, the revised Scope includes conducting three additional public meetings; developing estimates of revenues available to implement the recommended transit network for the San Bernardino Valley and the balance of the County; and the completion of the Valley transit modeling work. An extension of the time of performance to September 2, 2009, will allow for time to complete the work, conduct the public meetings, provide opportunities for SANBAG policy committee review, and coincide with a presentation of the LRTP to the SANBAG Board for adoption. The estimated cost to complete the LRTP is \$150,094.

The attached Amendment No. 3 to Contract 04-058 is being recommended for approval.

Financial Impact: This item is not consistent with the adopted budget and requires an amendment to Task 40409000 – Comprehensive Transportation Plan, increasing the budget by \$150,094. Approval of Amendment No. 3 will increase the contract authority for

Board Agenda Item
April 1, 2009
Page 3

Contract 04-058 to a not to exceed \$721,854. The additional revenue of \$150,094 is being provided from Valley Measure I TMEE.

Reviewed By: This item was scheduled for review by the Plans and Programs Committee on March 18, 2009. However, due to time constraints the item was not heard and is being presented directly to Board.

Responsible Staff: Michael Bair, Interim Director of Transit and Rail Programs
Beth Kranda, Transit Analyst

Amendment Number 3

To Contract 04-058

Parsons Transportation Group

THIS AMENDMENT NUMBER 3 to Contract 04-058 is hereby entered into and made effective this 1st day of April, 2009, by and between the SAN BERNARDINO ASSOCIATED GOVERNMENTS (hereinafter referred to as "AGENCY") and the PARSONS TRANSPORTATION GROUP, INC. (hereinafter referred to as "CONTRACTOR") WITH REGARD TO THE PREPARATION OF A Long Range Transit Plan (LRTP) for San Bernardino County.

WHEREAS, AGENCY and CONTRACTOR previously entered into Contract 04-058 on June 2, 2004 for the preparation of a Long Range Transit Plan (LRTP) for San Bernardino County; and

WHEREAS, AGENCY and CONTRACTOR amended Contract 04-058 on January 4, 2006, extending the Time of Performance to September 30, 2006; amending the Scope of Work to include conducting an on-board survey of Omnitrans services, integrating the results of the Omnitrans and Metrolink user survey information into the Summary of Current San Bernardino Transit Users, and implementing a public involvement program for the LRTP; and increasing the contract authority by \$241,998 for a new total of \$541,998; and

WHEREAS, AGENCY and CONTRACTOR amended Contract 04-058 on August 1, 2007, extending the Time of Performance to July 2, 2008 and increasing the contract authority by \$29,762 for Project Management expenses for a new total of \$571,760; and

WHEREAS, AGENCY desires to amend Contract 04-058 by amending the Scope of Work to include additional work; extending the Time of Performance; and increasing the contract authority; and

WHEREAS, CONTRACTOR has prepared a Project Budget Amendment (Attachment A) which AGENCY agrees to and agrees with the Time of Performance Extension.

NOW THEREFORE, it is agreed that Contract 04-058 is amended to include the following:

Section 1 Contractor Services is amended to include:

- a. Conduct additional model development
- b. Conduct additional land use scenario development and testing

SANBAG Contract No. A04-058-3

by and between

San Bernardino Associated Governments

and

Parsons Transportation Group

for

the Preparation of a Long Range Transit Plan for San Bernardino County**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input checked="" type="checkbox"/> Yes <u>10</u> % <input type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes: Retention is 10% of invoiced fee or profit

Original Contract:	\$ <u>300,000.00</u>	Previous Amendments Total:	\$ <u>271,760.00</u>
		Previous Amendments Contingency Total:	\$ _____
Contingency Amount:	\$ _____	Current Amendment:	\$ <u>150,094.00</u>
		Current Amendment Contingency:	\$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ \$721,854.00

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>40409000</u>	<u>6010</u>	<u>Valley Measure I</u>	_____	\$ <u>150,094.00</u>
		<u>TREE</u>	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: <u>6/2/04</u>	Contract Start: <u>6/5/04</u>	Contract End: <u>9/2/09</u>
New Amend. Approval (Board) Date: <u>4/1/09</u>	Amend. Start: <u>7/3/08</u>	Amend. End: <u>9/2/09</u>

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>2009</u> \$ <u>150,094.00</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? ☐ Yes ☒ No

If yes, which Task includes budget authority? _____

If no, has the budget amendment been submitted? ☒ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☐ Intergovernmental ☒ Private ☒ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☒ No ☐ Yes _____%Task Manager: **Ty Schuiling**Contract Manager: **Michael Bair**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

Filename: A04058-3-mab

Form 28 06/06

- c. Complete development of revenue estimates
- d. Develop land use policies and evaluation criteria
- e. Conduct meetings with Valley cities regarding SB 375 and assist in obtaining commitments for transit supportive land use
- f. Conduct three public meetings
- g. Present draft LRTP to SANBAG Policy Committees
- h. Prepare final LRTP and present to SANBAG Board

Section 2 Term is amended to extend the time of contract performance to September 2, 2009.

Section 3 Compensation is amended to increase payment to CONTRACTOR by an amount not to exceed One Hundred and Fifty Thousand and Ninety-Four Dollars (\$150,094.00) for a new not to exceed total contract authority of Seven Hundred and Twenty-One Thousand and Eight Hundred and Fifty-Four Dollars (\$721,854.00). AGENCY shall continue to retain 10% of the invoiced fee or profit until the successful completion of the work to be performed.

All other terms and conditions contained in Contract 04-058 shall remain in full force and effect.

IN WITNESS THEREOF, the authorized parties have signed below;

AGENCY:

**SAN BERNARDINO
ASSOCIATED GOVERNMENTS**

CONTRACTOR:

**PARSONS TRANSPORTATION
GROUP, INC.**

Gary C. Ovitt
President

Robert Sergeant
Vice President

Approved as to Form:

Jean-Rene Basle
SANBAG Counsel

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 18

Date: April 1, 2009

Subject: Overall transportation strategy for expenditure of transportation funding included in the American Recovery and Reinvestment Act of 2009 (ARRA)

Recommendation:* Receive and file this item as an information item, as the following items addressed in this agenda item are intended for individual action at the time of Board presentation.

Background: The ARRA was passed to partially address a nationwide economic decline and job loss associated with the most severe recession in recent memory. Nationwide, the Act will provide \$27.5 billion for highway improvements and \$8.34 billion for transit projects. Its passage on February 17, 2009 coincided with a State fiscal crisis that is still only partially resolved by recent passage of a state budget to close a projected \$42 billion deficit through mid-2010.

During March Policy Committee meetings, a series of agenda items were presented to the SANBAG Administrative, Major Projects, Plans and Programs, Commuter Rail and Mountain/Desert Committees, which will more fully explore the impacts of the ARRA and outline recommended action by SANBAG staff.

Following this agenda item is a series of items for consideration by the Board. These items have been updated since the Policy Committee review to reflect recommendations from the individual Policy Committees as well as any new/additional information since the Policy Committee presentations.

Approved
Board of Directors

Date: April 1 2009

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

The topics covered within each of these agenda items, are as follows:

- A. Update on Distribution within California of the ARRA Highway Funding.
- B. Establish the completion of the Interstate (I) 215 Corridor Improvements within the City of San Bernardino as a priority, and allocation of the full amount of Federal Stimulus funds under the discretion of SANBAG to the I-215 Corridor Improvements.
- C. Resolution No. 09-010, Issuance of the 2009 Sales Tax Revenue Note (Limited Tax Bonds).
- D. Allocation of ARRA - Transit Provisions.
- E. Use of Measure I Valley Freeway Funds for Local Projects in Place of ARRA Regional Stimulus Funds.

Although California legislation to implement the ARRA (AB 20XXX – Bass) has been submitted, the details of this legislation as well as the exact funding impact to specific counties, continues to evolve. The presentation to the Board on April 1st will include any recent information and impacts to SANBAG and its member jurisdictions.

Financial Impact: This item has no current financial impact to the Fiscal Year 2009/2010 Budget. Based upon policy direction and subsequent approval, SANBAG's adoption of an ARRA strategy and project funding plan will result in the expenditure of millions of dollars on needed highway, transit and rail projects in San Bernardino County. Specific budgetary modifications will be presented as part of specific ARRA items.

Reviewed By: The full set of ARRA agenda items were reviewed by the Plans and Programs, Commuter Rail and Mountain/Desert Committees at their respective March meetings. The Administrative and Major Projects Committee reviewed the I-215 prioritization and sales tax revenue note items at their March meetings and unanimously recommended approval in their conceptual form.

Responsible Staff: Deborah Robinson Barmack, Executive Director

Minute Action

AGENDA ITEM: 18A

Date: April 1, 2009

Subject: Update on Distribution within California of American Recovery and Reinvestment Act of 2009 (ARRA) Highway Funding

Recommendation:* Receive report.

Background: As described at the SANBAG Board of Directors' meeting of March 4, 2009, the ARRA requires that 70 percent of highway funds are programmed by the state with a 120-day use-it-or lose-it provision, and 30 percent is to be suballocated to regions with no 120-day requirement. Existing state law would then direct use of the 70 percent share for SHOPP projects, after which the balance would flow into the State Transportation Improvement Program (STIP) and be split into regional and interregional shares. However, two legislative alternatives are currently under consideration in Sacramento: one that would direct 62.5 percent of the funds to regions and 37.5 percent to remain with the State, and one that would direct a maximum amount of funding into the State Highway Operation and Protection Program (SHOPP). Under the former scenario, each region would receive a share from the 30 percent share suballocated pursuant to federal law, a slightly larger share of the state portion that would be subject to use-it-or-lose-it provisions, and no additional STIP funds. The state's 37.5 percent share would fund SHOPP projects, with the balance allocated in accordance with state priorities.

ARRA road funding to San Bernardino County projects under existing law would include a combination of \$36 to \$38 million in Regional Surface Transportation Program (RSTP) funds plus STIP funds. The amount of available STIP funding

*

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

would be dependent on the amount of funding the state chooses to direct to SHOPP projects. At the level of SHOPP funding currently under discussion, about \$51 million would be available to SANBAG through the STIP. Under the first legislative proposal, all funds received by formula to SANBAG would be RSTP; \$36 to \$38 million from the suballocated funds and more than \$41 million from the state share. A key element of SANBAG staff strategy continues to center on obtaining a share of the State-controlled stimulus funding to augment funds available to SANBAG by formula. It currently appears that the amount of highway stimulus funding available to SANBAG by formula would be greater under existing law than through the primary legislative alternative, but that the amount of state share funding that could be leveraged to assist the I-215 project would be greater with the passage of the new legislation.

It is very unclear when the uncertainties described above will be resolved. Staff will provide a detailed update to the extent additional information is known by the time of the meeting.

Financial Impact: This item has no direct financial impact on the approved SANBAG Budget for Fiscal Year 2008-2009.

Reviewed By: This item was received by the Plans and Programs Policy Committee on March 18, 2009.

Responsible Staff: Ty Schuiling, Director of Planning and Programming

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 18B

Date: April 1, 2009

Subject: Establish the completion of the I-215 Corridor Improvements within the City of San Bernardino as a priority. In addition, allocate the full amount of Federal Stimulus funds under the discretion of SANBAG to the I-215 Corridor Improvements

Recommendation:*

- 1) Establish the completion of the I-215 Corridor Improvements within the City of San Bernardino as a priority.
- 2) Approve allocating the full amount of Federal Stimulus funds under the discretion of SANBAG, currently estimated at \$80.6 million, to the I-215 Corridor Improvements.
- 3) Authorize \$15,549,000 of Project of National and Regional Significance (PNRS) funds to be unprogrammed from the I-10/Tippecanoe Interchange project and programmed on the I-215 Corridor Improvements, Segments 1&2 and program \$15,549,000 of Fiscal Year 10/11 and 11/12 Surface Transportation Program (STP) on the I-10/Tippecanoe Interchange project.

Background: The Proposition 1B funding for the I-215 corridor improvements is in jeopardy due to the state fiscal crisis. The remaining improvements, with a construction value of \$431M, are ready to be advertised with construction commencing this fall. The amount of Proposition 1B funds in jeopardy is \$326 million.

The I-215 project is a project of statewide significance with the greatest opportunity to leverage a portion of the stimulus funds under State discretion.

*

Approved
Board of Directors

Date: April 1, 2009

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

The main reasons the project has this opportunity is that the project is ready to break ground, the construction project will create an estimated 8,000 jobs, and this region is one of the most economically impacted areas of the State. However, the stimulus funds will not be sufficient to replace all the Proposition 1B funds. To keep the I-215 project moving to construction, local funds will also be required to make up the shortfall. The local funds will be reimbursed by Proposition 1B funds. The other option is to delay the project waiting for Proposition 1B funds.

A funding scenario has been developed that assists in meeting this shortfall by utilizing funds that are at the discretion of SANBAG. The funding scenario includes utilizing all the stimulus funds under SANBAG discretion and future Measure I revenue. Access to the future Measure I 2010-2040 revenue could be obtained by utilizing a financial instrument, such as a short term note. The proposed funding to complete the I-215 Improvements consists of the following

Federal funds (existing)	\$97,279,978
Federal funds (new PNRS&TEA)	\$18,982,000
State TCRP (existing)	\$5,517,000
Measure I (existing)	\$1,336,000
Federal Stimulus under State's discretion	\$49,120,000
Federal Stimulus under SANBAG's discretion	\$78,943,349
<u>Measure I (Via the purchase of State GO Bonds)</u>	<u>\$177,820,673</u>
Total	\$428,999,000

Please note that the federal stimulus funding has not been completely confirmed. The amounts shown are based on our negotiations with Caltrans Headquarters.

As stated above, the local funds will be reimbursed by Proposition 1B funds. There are two options for placing the Measure I funds on the corridor project. The first option is to program the funds directly onto the project. An agreement would be entered into with the State that would specify the reimbursement requirements. With the uncertainty of State finances, the State has indicated that a specific date for return of the funds would not be included in the agreement. In addition, the funds returned would need to be expended on a project that meets the requirements of the Congestion Mobility Improvement Account (CMIA).

The second option is to utilize the Measure I funds to purchase a special issuance of State General Obligation Bonds titled Private Investment Bonds (PIBs). In purchasing the PIBs, an agreement would be entered into that specifies that the proceeds are to be expended on the I-215 project. The PIBs would mature in approximately three years. Funds repaid to SANBAG from the State can be utilized at the discretion of SANBAG. In addition, the PIBs would provide a yield of return that would offset most of the cost of the SANBAG financial instrument. In summary, the reimbursement date would be established and the utilization of

the funds is totally at SANBAG's discretion. Staff recommends and is pursuing the second option.

The I-10/Riverside Avenue interchange project will be ready to go to construction by this summer. Included in the funding mix is Trade Corridor Improvement Funds (TCIF) that are not available at this time. The City of Rialto had considered purchasing PIBs for this project by utilizing their redevelopment bond proceeds. Due to constraints on their bond proceeds they are not able to make this purchase. However, they are willing to backfill the TCIF funds by placing their bond proceeds directly onto the project, with SANBAG reimbursing the City as specified in the Advancement Agreement.

Placing the bond proceeds directly onto the project puts all the risk on SANBAG, as SANBAG needs to reimburse the City, but we don't know when the TCIF funds will be reimbursed. Since the TCIF, statewide is over-programmed, we may never get reimbursed.

To mitigate this risk, staff is recommending that \$15.5 million of PNRS funds currently programmed on I-10/Tippecanoe be programmed on the I-215 Corridor, with the I-10/Tippecanoe funds being backfilled with STP funds in FY 10/11 and FY 11/12. This will allow \$15.5 million of the TCIF funds made available by SANBAG for purchasing PIBs to be allocated onto the I-10/Riverside Avenue Interchange project.

An item that included most of the above information was considered by the Administration Committee on March 11, 2009 and Major Projects Committee on March 12, 2009. Both Committees recommended the approval of a Resolution authorizing the issuance of the 2009 Sales Tax Revenue Note in the amount not to exceed \$250 million. \$193.3 million of the Note revenue will be utilized in the short term to purchase PIBs that will fund the I-215 project and the I-10/Riverside Interchange project.

Financial Impact: The revenue from a financial instrument, such as a short term notes, that are utilized to purchase the State General Obligation (Private Investment) Bonds will be unavailable until the State Bonds mature.

Reviewed By: The item was reviewed and recommended for approval by Plans and Programs Policy Committee on March 18, 2009 (8-1-0; Opposed: Mitzelfelt). The item was also reviewed and unanimously recommended for approval by Commuter Rail Committee on March 19, 2009 and Mountain Desert Committee/Measure I Committee on March 20, 2009. SANBAG Counsel, the SANBAG Financial Advisor, Bond Counsel, and Disclosure Counsel have also reviewed this item.

Responsible Staff: Garry Cohoe, Director of Freeway Construction

Minute Action

AGENDA ITEM: 18C

Date: April 1, 2009

Subject: Resolution No. 09-010, Issuance of the 2009 Sales Tax Revenue Note (Limited Tax Bonds) and Designating the Underwriter and Printer

Recommendation:*

1. Approve Resolution No. 09-010 authorizing issuance of the 2009 Sales Tax Revenue Note (Limited Tax Bonds), in an amount not to exceed \$250 million; and
2. Designate Merrill Lynch and Company for underwriting services; and
3. Designate Financial Printer Resource, Inc. for printing services.

Background: In 2004, San Bernardino County voters approved the extension of the Measure I sales tax (Measure I 2010-2040). Ordinance 04-01 authorizes the allocation of revenue to the Valley and Mountain-Desert areas and establishes the expenditure plan. SANBAG is in the process of finalizing the Strategic Plan for Measure I 2010-2040. The strategic plan's cash flow analysis identifies the need for future bonded indebtedness to facilitate the proposed expenditure plan.

A financing scenario has been developed to keep the I-215 corridor project on schedule and provide temporary funding for certain Measure I 2020-2040 projects. These projects will assist SANBAG in meeting its Trade Corridor Improvement Fund (TCIF) Baseline Agreement obligations.

The financing scenario includes utilizing all the stimulus funds under SANBAG discretion and short-term investment of future Measure I revenue. Access to the future Measure I 2010-2040 revenue could be obtained by issuing a short-term sales tax revenue note. To meet our obligations per the TCIF Baseline agreements, the sale of Measure I 2010-2040 long-term bonds will be required in

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

the near future. To meet these obligations and to give access to funds required to keep the I-215 moving forward, it is recommended that the issuance of a sales tax revenue note be completed at this time.

A portion of the sales tax revenue note proceeds would be used to purchase a special issuance of State General Obligation Bonds titled Private Investment Bonds (PIBs). In purchasing the PIBs, an agreement would be entered into that specifies that the proceeds are to be expended on the I-215 project. The PIBs would mature in approximately 3-4 years. The PIBs would provide a yield of return that would offset most of the interest cost of the sales tax revenue note.

As stated earlier, the sale of Measure I 2010-2040 bonds will be required to meet the future obligations outlined in the TCIF Baseline Agreements. Until a comprehensive Delivery Plan is developed which includes financial strategies, the total amount of bonding needs cannot be determined. In developing the Delivery Plan an analysis will be conducted of how the issuance of the long term bond will impact the various programs. For this reason, it is recommended that a short-term sales tax revenue note be issued that will mature in approximately 24 months. At that time a long term bond would be issued that would include additional SANBAG bonding needs.

The short-term sales tax revenue note will not exceed \$250 million. The note will provide financing for the following Measure I 2010-2040 projects over the duration of the note:

Projects to be identified in the SANBAG Board approved Delivery Plan (Projects may include Devore Interchange, I-10 HOV, I-215 Bi-County, I-215/ Barton Rd Interchange, I-215/Mt Vernon Interchange, Ranchero Rd Interchange, Lenwood Grade Separation)	\$190,000,000*
Valley RR Grade Separations (Projects may include Palm Ave, South Milliken, North Milliken, Vineyard Ave, South Archibald, Glen Helen)	\$3,000,000
I-10/Citrus&Cherry Interchanges	\$12,000,000
La Mesa/Nisqualli Interchange	\$24,000,000
Total Project Costs	\$229,000,000
Estimated Issuance Costs, Capitalized Interest & Reserve	\$21,000,000
Total Sales Tax revenue Note	\$250,000,000

* Repayment from the State Private Investment Bonds

SANBAG recently received several proposals for the underwriting and printing services relating to the 2009 sales tax revenue note. The lowest cost proposal for underwriting services was Merrill Lynch & Company. The lowest bid for printing services was from Financial Printing Resource, Inc. in the amount of \$1,438.

In summary, it is recommended that authority be granted to issue a short-term sales tax revenue note for an amount not to exceed \$250 million. The note will mature within 24 months with an estimated interest rate of 3.5-4% based on current market conditions. It is also recommended that SANBAG designate Merrill Lynch & Company for underwriting services and Financial Printing Services, Inc. for printing services.

Financial Impact: The 2009 Sales Tax Revenue Note will provide short-term financing projects identified in the Measure I 2010-2040 expenditure plan and provide a vehicle to ensure the timely receipt of Proposition 1B funding for the I-215 project.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Administrative Committee on March 11, 2009, Major Projects Committee on March 12th, Plans and Programs Committee on March 18th, Commuter Rail Committee on March 19th, and the Mountain/Desert Committee on March 20th.

Responsible Staff: William Stawarski, Chief Financial Officer

RESOLUTION NO. 09-010

AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$250,000,000 AGGREGATE PRINCIPAL AMOUNT OF SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY SALES TAX REVENUE NOTES (LIMITED TAX BONDS), 2009 SERIES A, THE EXECUTION AND DELIVERY OF AN INDENTURE, SUPPLEMENTAL INDENTURE, PURCHASE CONTRACT, OFFICIAL STATEMENT AND CONTINUING DISCLOSURE AGREEMENT AND THE TAKING OF ALL OTHER ACTIONS NECESSARY IN CONNECTION THEREWITH

WHEREAS, the San Bernardino County Transportation Authority (the "Authority") is a public instrumentality duly established and existing pursuant to the Local Transportation Authority and Improvement Act (the "Act"), being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*);

WHEREAS, the Authority is authorized pursuant to the Act to, among other things, and with voter approval, levy a retail transactions and use tax in accordance with the provisions of Chapter 5 of the Act (Section 180200 *et seq.*) and Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code (the "Sales Tax Law") and to issue limited tax bonds payable from the proceeds of such tax;

WHEREAS, the Authority adopted Ordinance No. 89-1, named the "Transportation Expenditure Plan and Retail Transactions and Use Tax Ordinance" (as further amended and supplemented, "Ordinance No. 89-1"), on August 2, 1989, pursuant to the provisions of the Act, which Ordinance provided for the imposition of a retail transactions and use tax (the "Sales Tax") applicable in the incorporated and unincorporated territory of the County of San Bernardino (the "County") in accordance with Chapter 5 of the Act and the Sales Tax Law at the rate of one-half of one percent (1/2%) for a period not to exceed twenty (20) years;

WHEREAS, by its terms, Ordinance No. 89-1 became effective at the close of the polls on November 7, 1989, the day of the election at which the proposition imposing the Sales Tax was approved by a majority vote of the electors voting on the measure, and the collection of the Sales Tax commenced on April 1, 1990;

WHEREAS, the Authority adopted Ordinance No. 04-01, named "An Ordinance Providing for the Continuation of a One-Half of One Percent Retail Transactions and Use Tax by the San Bernardino County Transportation Authority for Local Transportation Purposes and the Transportation Expenditure Plan" (the "Ordinance") on June 2, 2004, pursuant to the provisions of the Act, which Ordinance provides for the continued imposition of the Sales Tax applicable in the incorporated and unincorporated territory of the County in accordance with the provisions of Chapter 5 of the Act and the Sales Tax Law at the rate of one-half of one percent (1/2%) for a period not to exceed thirty (30) years beginning April 1, 2010;

WHEREAS, the Ordinance became effective at the close of the polls on November 2, 2004, the day of the election at which the proposition providing for the continued imposition of the Sales Tax was approved by more than two-thirds of the electors voting on the measure;

WHEREAS, the Authority is authorized by Section 180251 of the California Public Utilities Code to issue from time to time limited tax bonds authorized by voters concurrently with the approval of the Sales Tax, secured and payable in whole or in part from revenues of the Sales Tax ("Sales Tax Revenues");

WHEREAS, pursuant to Chapter 6 of the Act (Section 180250 *et seq.*), Ordinance No. 89-1 empowers the Authority to sell or issue limited tax bonds in the aggregate principal amount at any one time outstanding not to exceed \$500 million to carry out the transportation projects described in the San Bernardino County Transportation Expenditure Plan, adopted as part of Ordinance No. 89-1, including any amendments thereto;

WHEREAS, pursuant to Chapter 6 of the Act, the Ordinance empowers the Authority to sell or issue, from time to time, on or before the collection of the Sales Tax, bonds, or other evidences of indebtedness, including negotiable bond anticipation notes, in the aggregate principal amount at any one time outstanding of not to exceed the estimated proceeds of the tax, as determined by the San Bernardino County Transportation Authority Expenditure Plan adopted as part of the Ordinance, including any future amendments thereto (the "Expenditure Plan"), for capital outlay expenditures for transportation purposes as set forth in the Ordinance, including to carry out the transportation projects described in the Expenditure Plan;

WHEREAS, the Authority has heretofore authorized the issuance of (i) its Sales Tax Revenue Bonds (Limited Tax Bonds), 1996 Series A (the "1996 Bonds"), (ii) its Sales Tax Revenue Bonds (Limited Tax Bonds), 1997 Series A (the "1997 Bonds"), (iii) its Sales Tax Revenue Refunding Bonds (Limited Tax Bonds), 2001 Series A (the "2001A Bonds"), and (iv) its Sales Tax Revenue Refunding Bonds (Limited Tax Bonds), 2001 Series B (the "2001B Bonds" and, together with the 1996 Bonds, the 1997 Bonds, and the 2001A Bonds, the "Prior Bonds"), all pursuant to an Indenture, dated as of March 1, 1992 (as amended and supplemented, the "1992 Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as successor in interest to BNY Western Trust Company, as trustee (the "Trustee");

WHEREAS, the Authority hereby determines that one or more new series or subseries of bond anticipation notes in an aggregate principal amount not to exceed two hundred fifty million dollars (\$250,000,000) is necessary for the following purposes, the total estimated cost of which is two hundred ten million dollars (\$250,000,000): (i) to finance funds to acquire, construct, improve, renovate and equip certain of those capital facilities authorized in the Expenditure Plan, (ii) to pay capitalized interest on the notes through maturity, (iii) to fund a reserve fund, if any, for such notes, and (iv) to pay costs of issuance incurred in connection with such notes, and the Authority has determined that such notes in an amount not to exceed such principal amount shall be issued, secured by a lien on the Sales Tax Revenues collected pursuant to the Ordinance on and after April 1, 2010, and entitled, "San Bernardino County Transportation Authority Sales Tax Revenue Notes (Limited Tax Bonds), Series 2009" (the "Series 2009 Notes");

WHEREAS, until the Prior Bonds have been discharged in full, the 2009 Notes will be payable from and secured by the Sales Tax Revenues on a basis subordinate to the Prior Bonds;

WHEREAS, while the 2009 Notes are outstanding, no further obligations will be issued under the 1992 Indenture;

WHEREAS, the Authority has appointed Montague, DeRose & Associates as financial advisor to the Authority, and has retained Orrick, Herrington & Sutcliffe LLP as bond counsel and Nossaman LLP as disclosure counsel to the Authority;

WHEREAS, Senate Bill 1266 (Statutes 2006, Chapter 25) established the Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006 (Government Code 8879.20 *et seq.*) as adopted by voters in the State of California (the "State") upon approval of Proposition 1B on November 7, 2006 ("Proposition 1B");

WHEREAS, due to the fiscal crisis in the State's 2008-09 fiscal year, on December 17, 2008, the State's Pooled Money Investment Board (the "PMIB") suspended further project reimbursements for projects funded by Proposition 1B monies, including reimbursements to projects under construction, which suspension has the potential to delay transportation projects and increase costs of construction for such projects within the County ("County Proposition 1B Projects");

WHEREAS, the Authority hereby determines that a purchase of State general obligation bonds by the Authority could assist the State in continuing County Proposition 1B Projects and desires to authorize such investment;

WHEREAS, the Authority hereby further determines that the Series 2009 Notes shall be issued pursuant to an Indenture (the "Indenture"), as it may be amended and supplemented pursuant to its terms, including as amended and supplemented by a First Supplemental Indenture thereto (the "Supplemental Indenture"), which Indenture and Supplemental Indenture are proposed to be entered into by the Authority and the Trustee;

WHEREAS, there has been prepared and presented to the Board of Directors of the Authority (the "Board") a proposed form of Indenture and proposed form of Supplemental Indenture;

WHEREAS, in order to set forth the terms of sale of the Series 2009 Notes, the Authority proposes to enter into a bond purchase agreement (the "Purchase Contract") with a purchaser or purchasers (the "Purchaser") to be designated by the Chief Financial Officer of the Authority (the "Chief Financial Officer") pursuant to a request for proposals process;

WHEREAS, there has been prepared and presented to the Board a proposed form of Purchase Contract;

WHEREAS, in order to provide information about the Series 2009 Notes and related matters to purchasers and potential purchasers of the Series 2009 Notes, the Authority proposes to execute and deliver an official statement (the "Official Statement");

WHEREAS, there has been prepared and presented to the Board a proposed form of Official Statement in preliminary form (the "Preliminary Official Statement") and a proposed form of Continuing Disclosure Agreement (the "Continuing Disclosure Agreement");

WHEREAS, the Authority expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with the projects in the Expenditure Plan prior to the issuance of indebtedness for the purpose of financing costs associated with such projects on a long-term basis;

WHEREAS, the Authority reasonably expects that the 2009 Notes and other sales tax bonds in an amount not to exceed \$500,000,000 will be issued from time to time for the purpose of financing costs of the projects in the Expenditure Plan on a long term basis and that certain of the proceeds of such debt obligations will be used to reimburse itself for the Reimbursement Expenditures;

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Authority to declare its reasonable official intent to reimburse prior expenditures for such projects with proceeds of a subsequent borrowing;

WHEREAS, the Authority has been presented with the forms of the Indenture, the Supplemental Indenture, the Purchase Contract, the Continuing Disclosure Agreement and the Official Statement relating to the financing described herein (the "Financing"), and the Authority has examined and approved each document and desires to authorize and direct the execution of such documents as are specified herein and such other documents as are necessary in connection with the Financing and to authorize and direct the consummation of the Financing; and

WHEREAS, all acts, conditions and things required by the Law and the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the Financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize such Financing and to authorize the execution of the Indenture, the Supplemental Indenture, the Purchase Contract, the Official Statement and the Continuing Disclosure Agreement for the purposes, in the manner and upon the terms provided;

NOW THEREFORE, THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY RESOLVES:

Section 1. The Authority finds and determines that the foregoing recitals are true and correct.

Section 2. The issuance by the Authority of not to exceed \$250,000,000 aggregate principal amount of San Bernardino County Transportation Authority Sales Tax Revenue Notes (Limited Tax Bonds), 2009 Series A, in accordance with the provisions set forth in the Indenture, in one or more series or subseries, is hereby authorized and approved.

Section 3. The proposed form of Indenture and Supplemental Indenture presented to this meeting and the terms and conditions thereof are hereby approved. The structure, date,

maturity date or dates (not to exceed three years from the date of issuance), a fixed interest rate or rates (such rates not to exceed a maximum of 6% per annum) or methods of determining the same, principal and interest payment dates, forms, registration and conversion and exchange privileges, if any, place or places of payment, terms of redemption, tender, mandatory purchase, authorized denominations in any integral multiple of \$5,000, or additional series designation and number thereof, form of notes and other terms of the Series 2009 Notes shall be (subject to the foregoing limitations) as provided in the Indenture and the Supplemental Indenture as finally executed and delivered.

The Executive Director of the Authority (the "Executive Director") and the Chief Financial Officer (each an "Authorized Officer") are singly hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Indenture and the Supplemental Indenture, in substantially said form, with such changes therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The proposed form of Purchase Contract presented to this meeting and the terms and conditions thereof are hereby approved. An Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the Authority, (i) to sell the Series 2009 Notes pursuant to the Purchase Contract to the Purchaser designated by the Chief Financial Officer, and (ii) to execute and deliver a Purchase Contract, in substantially said form, with such changes therein as the officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof, provided that the Purchaser's compensation set forth therein shall not to exceed 0.75% of the principal amount of the Series 2009 Notes and the true interest cost ("TIC") to the Authority of the 2009 Notes shall not exceed 4.5%.

Section 5. The proposed form of Preliminary Official Statement presented to this meeting is hereby approved. An Authorized Officer is hereby authorized and directed to execute and deliver to the Purchaser a certificate deeming the Preliminary Official Statement, in substantially the form on file with the Clerk and presented to this meeting and with such changes as the Authorized Officer approves in the interest of the Authority, final within the meaning of Securities Exchange Authority Rule 15c2-12. The Purchaser is hereby authorized to distribute the Preliminary Official Statement in the form so deemed final by the Authorized Officer. An Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver a final Official Statement, in substantially said form, with such changes therein as the officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The proposed form of Continuing Disclosure Agreement presented to this meeting is hereby approved. An Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Continuing Disclosure Agreement, in substantially said form, with such changes therein as such officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. An Authorized Officer is hereby authorized to enter into an agreement or agreements with the State pursuant to which the State will continue to fund certain County Proposition 1B Projects, as designated by the Authorized Officer, that would otherwise be at risk due to the PMIB suspension of Proposition 1B reimbursements, and, in connection with any such agreements, to invest amounts, including proceeds of the 2009 Notes, including amounts held in funds and accounts created under the Indenture and Supplemental Indenture and other funds of the Authority, in general obligation bonds issued by the State, and notwithstanding anything to the contrary contained in the investment policy of the San Bernardino Associated Governments applicable to the Authority, which provisions are hereby waived, such investments shall be permitted investments of the Authority.

Section 8. In compliance with the requirements of Section 1.150-2 of the Treasury Regulations, the Authority hereby declares its intent to reimburse itself for the Reimbursement Expenditures.

Section 9. All approvals, consents, directions, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, including, without limitation, any amendment of any of the documents authorized by this Resolution or other agreement related thereto, or any reserve facility, any investment of proceeds of the Series 2009 Notes, or in connection with the addition, substitution or replacement of underwriters, or the defeasance or discharge of the Prior Bonds and the 1992 Indenture as it has been hereto amended and supplemented, or any agreements with paying agents, escrow agents or verification agents, the removal or replacement of the Trustee or any similar action may be given or taken by an Authorized Representative (as such term is defined in the Indenture), without further authorization or direction by this Board, and each Authorized Representative is hereby authorized and directed to give any such approval, consent, direction, notice, order, request or other action and to take any such action which such Authorized Representative may deem necessary or desirable to further the purposes of this Resolution.

All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the issuance of the Series 2009 Notes, which may be necessary or desirable in connection with any default under or amendment of such documents, settlements or revisions, may be taken or given by the Authorized Representative, without further authorization by this Board, and the Authorized Representative is hereby authorized and directed to give such consent, approval, notice, order or request and to take any such action which such officer may deem necessary or desirable to further the purposes of this Resolution and the transactions contemplated hereby.

Section 10. All actions heretofore taken by the officers and agents of the Authority with respect to the Financing and the issuance and sale of the Series 2009 Notes are hereby ratified, confirmed and approved. If at the time of execution of any of the documents authorized herein, the Executive Director is unavailable, such documents may be executed by the Deputy Executive Director of the Authority or the Chief Financial Officer in lieu of the Executive Director. The Chief Financial Officer of the Authority shall act as the Auditor-Controller of the Authority for execution of the Series 2009 Notes. The Clerk of the Board of the Authority is hereby authorized to attest to the execution by the Executive Director or the Deputy Executive

Director or the Chief Financial Officer of any of such documents as said officers deem appropriate.

The proper officers and agents of the Authority are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Authority, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, certificates and documents, including, without limitation, any tax certificates or agreements, any agreements for depository or verification services, and any agreements for rebate compliance services, which they, or any of them, may deem necessary or advisable in order to consummate the Financing and the issuance and sale of the Series 2009 Notes and otherwise to carry out, give effect to and comply with the terms and intent of the Ordinance, this Resolution, the Series 2009 Notes and the documents approved hereby.

Section 11. This Resolution shall take effect immediately upon its adoption and approval.

APPROVED AND ADOPTED by the San Bernardino County Transportation Authority at its meeting on [April 1], 2009.

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	<i>Approved</i> <i>Board of Directors</i>
	<i>Date:</i> _____
<i>Moved:</i>	<i>Second:</i>
<i>In Favor:</i>	<i>Opposed:</i> <i>Abstained:</i>
	<i>Witnessed:</i> _____

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 18D

Date: April 1, 2009

Subject: Allocation of the American Recovery and Reinvestment Act of 2009 – Transit Provisions

Recommendation:* Approve the allocation of the ARRA Transit Funds to the following operators:

1. Barstow Area Transit	\$ 428,126
2. Morongo Basin Transit Authority	\$ 493,283
3. Mountain Area Regional Transit Authority	\$ 366,551
4. Omnitrans	\$ 20,708,588
5. Needles Area Transit	\$ 53,388
6. Victor Valley Transit Authority	\$ 3,777,403
7. Southern California Regional Rail Authority	\$ 7,333,942

Background: The ARRA provides \$8.34 billion nationally for transit projects. The distribution of the majority of this amount follows existing formula programs that allocate funds to urban and rural areas: \$5.97 billion is allocated to urban areas using the Section 5307 formula, \$742 million is allocated to urban areas using the Section 5309 Rail Modernization formula and \$760 million is allocated to rural areas using Section 5311 formula. The ARRA includes three discretionary transit programs (these funds are not under SANBAG purview to allocate): \$742 million for major capital investment (existing New and Small Starts projects), \$17 million

Approved
Board of Directors

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

BRD0904b-bk
Attachment:
BRD0904b1-bk
50109000

for tribal transit and \$100 million for new energy programs. All transit funds are for capital projects only. The transit funds must be obligated within 180 days or 50% of any unobligated funds will be withdrawn and any remaining funds not obligated within one year will be withdrawn. Any funds withdrawn will be distributed to areas that fully obligated their funds.

It is anticipated that the San Bernardino Valley will receive \$27.5 million under the Section 5307 formula of which \$20.7 million and \$6.7 million will be available for bus and rail projects respectively. In addition, the San Bernardino Valley will receive \$583,000 under the Section 5309 formula program for rail projects. The Victor Valley is expected to receive \$3.4 million under the Section 5307 formula. San Bernardino County rural transit agencies are expected to share in \$1.7 million that will be made available under the Section 5311 formula. In total the ARRA is expected to provide nearly \$33.2 million for the county's transit systems. All projects have been programmed into the Regional Transportation Improvement Plan administered through the Southern California Association of Governments. In addition, all required public hearings have been scheduled and will be completed prior to application submission.

With the exception of the Southern California Regional Rail Authority (SCRRA), staff has been working with the remaining six transit systems to identify potential projects for the ARRA funds. The first priority has been to identify current year eligible operating expenses that can be capitalized (preventive maintenance or capitalized cost of contracting) so that other federal and local funds will be available to support next year's operating budget when another 5% decline of Local Transportation Funds receipts is expected. Where there are remaining funds, staff is working with the operators to identify other capital projects that can be delivered quickly. Staff has also been working closely with the SCRRA and its other member agencies to identify eligible capital projects for the rail funds, with funding for Positive Train Control being a high priority.

Financial Impact: The Board's approval of this item will result in the allocation of \$33.2 million in ARRA funds to seven public transit agencies.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Plans and Programs Committee on March 18, 2009, the Commuter Rail Committee on March 19th, and the Mountain/Desert Committee on March 20th.

Responsible Staff: Beth Kranda, Transit Analyst

BRD0904b-bk
Attachment:
BRD0904b1-bk
50109000

5307 Projects

Organization	Amount	Project
Omnitrans	\$9,632,350	preventative maintenance 2008/20089
	\$5,000,000	ERP Computer System Phase II
	\$1,000,000	Fareboxes
	\$1,800,000	Video Surv. System
	\$1,776,238	ERP Computer System Phase I
	\$1,500,000	Yucaipa Transit Station
	<u>\$20,708,588</u>	
SCRRA	\$4,310,000	Positive Train Control
		\$3,726,562 in 5307 and \$583,438 in 5309
	\$2,187,942	Rehab/Renovation - 5307 funds
	\$836,000	Central Maintenance Facility - 5307
	<u>\$7,333,942</u>	
VVTa	\$1,500,000	Capital cost of Contracting
	\$1,913,070	New Facility
	<u>\$3,413,070</u>	

5311 Projects

Barstow	\$428,126	Capital Cost of Contracting 2008/2009
MARTA	\$180,000	Preventative Maintenance 2008/2009
	\$186,551	Retro/rehab/repair facilities
	<u>\$366,551</u>	
MBTA	\$193,283	Preventative Maintenance 2008/2009
	\$300,000	29 Palms Transit Station
	<u>\$493,283</u>	
Needles	\$53,388	Capital Cost of Contracting 2008/2009
VVTa	\$159,933	New Facility
	\$204,400	New Vehicles
	<u>\$364,333</u>	

Minute Action

AGENDA ITEM: 18E

Date: April 1, 2009

Subject: Use of Measure I Valley Major Project and State Funds for Local Projects in Place of ARRA Regional Stimulus Funds

Recommendation:*

1. In recognition of the allocation of all sub-allocated ARRA Regional Surface Transportation Program stimulus funds to I-215 construction projects, direct SANBAG staff to develop a Local Stimulus Program for distribution of funds to cities and the county in place of ARRA Funds that incorporates the following principles:
 - a. ARRA funds will be exchanged with "clean" local and state funds.
 - b. Amount to be allocated should be the amount that would have been suballocated to local agencies under the intent language of Assembly Bill 20 of the third extraordinary legislative session.
 - c. Program may be multi-year to achieve the total suballocation amounts.
 - d. Will evaluate different methods of distribution from per capita to the current Measure I local pass through formula.
 - e. Once developed, the final Local Stimulus Program will be brought back for consideration to the policy committees and the Board of Directors.

Background: With the adoption of the ARRA, the federal government will be allocating about \$2.57 billion to the State of California for infrastructure projects. It is still unclear exactly what method the state will use to disburse these funds to regional agencies like SANBAG. Under existing law, SANBAG is under no obligation to pass

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*Approved
Board of Directors*

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

through ARRA funds to local agencies. Under proposed legislation currently circulating in Sacramento in AB 20 3x there is no requirement for any funds to be passed through either, though language in the proposal states a legislative intent to pass-through 40% of the funds to local agencies. In either case, SANBAG wants to see the benefit of ARRA funds passed through to our member agencies to use on local transportation priorities.

Regardless of the formula used by the state to disburse the ARRA funds, it is clear that these funds have major drawbacks. One drawback is the need for any project funded by these dollars to be compliant with the federal environmental guidelines contained in the National Environmental Policy Act (NEPA). Another drawback is that projects would be subject to the Caltrans Local Assistance process. Compliance with NEPA and maneuvering through Local Assistance can be time consuming and involved processes. Most local projects have not needed to go through these processes to date and doing so now could delay project delivery.

The proposal to develop a Local Stimulus Program that would provide Measure I Valley major project and other leveraged state funds in place of ARRA stimulus funds will resolve these issues. SANBAG will place the ARRA funds on the I-215 project which has already gone through the NEPA process and pass through "clean" money that local agencies can use without going through NEPA or the Local Assistance process.

Another benefit of using Measure I funds instead of ARRA funds is an opportunity to leverage additional funds from the State/Local Partnership Program of Proposition 1B. This program will provide regional agencies that have their own local transportation revenue source (i.e. a local sales tax measure) with funding over a five year period. SANBAG's portion of these funds would be approximately \$10 million per year for five years. This program requires a one to one local match. SANBAG staff will develop a program to leverage some of those funds for allocation to local agencies. Before this aspect of the program could be finalized, the state would have to sell Proposition 1B bonds to fund the program and SANBAG would have to clarify some of the technical requirements for the local match.

SANBAG staff proposes a distribution formula for these funds based on a \$200,000 minimum for every agency and the balance of the funds being distributed by population.

Some basic requirements to keep with the spirit of the ARRA and the rules for the State/Local Partnership Program funds will need to be adopted to show how the funds being exchanged are creating employment and improving our transportation infrastructure.

Some of the proposed requirements would be as follows:

1. Projects listed on an agency's approved Measure I five year capital improvement plan or lists submitted to SANBAG for stimulus funding.
2. Projects receiving this funding must be encumbered within 12 to 24 months of SANBAG Board approval.
3. Agencies must report on the number of direct jobs created by the project.
4. Agencies must receive an administrative funding approval from SANBAG.

These are just conceptual requirements which will be further refined in consultation with local technical staff and be presented with the final approval for the program at a later date.

Financial Impact: The specific financial impact will be determined once the details of the Local Stimulus Program are developed and the balances of unexpended Measure I Major Project funds is known. This impact will be presented along with the final program when it comes before the Board of Directors.

Reviewed By: This item was reviewed by the Plans and Programs Committee on March 18, 2009, the Commuter Rail Committee on March 19, 2009, and the Mountain/Desert Committee on March 20, 2009.

Responsible Staff: Duane A. Baker, Director of Management Services

Minute Action

AGENDA ITEM: 19

Date: April 1, 2009

Subject: Measure I 2010-2040 Strategic Plan

Recommendation: * 1) Approve the Measure I 2010-2040 Strategic Plan and the proposed policy revisions in Attachment 1
2) Defer the issue of whether redevelopment agency funding should be eligible as a development contribution for consideration in the 2009 update of the Congestion Management Program

Background: Development of the Measure I 2010-2040 Strategic Plan was initiated in 2005 to define the policy framework for delivery of the projects and programs referenced in the new Measure. The Strategic Plan will be the policy manual for delivery of the Measure I programs by SANBAG and its member agencies.

The Draft Measure I 2010-2040 Strategic Plan was released for formal review and comment on December 5, 2008 with the mailing of the December agenda for the Major Projects Committee. The draft was released to the other SANBAG committees through distribution in the agendas, and the draft was mailed to city managers and transit agencies on December 5. The closing date for comments was January 21, 2009.

Ten local jurisdictions and two transit agencies provided written comments on the draft Strategic Plan. SANBAG staff completed responses to the comments and reviewed them with the Comprehensive Transportation Plan Technical Advisory

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Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

Committee (CTP TAC) on February 9. The SANBAG Board of Directors held a workshop on February 17 to review SANBAG staff's responses. Staff discussed some of the key comments and responses, and addressed questions from Board members. The following issues/responses were discussed:

- Use of redevelopment agency funding as a development contribution - SANBAG legal counsel provided a verbal report on how redevelopment agency tax increment should be regarded and has now provided a letter to the SANBAG Executive Director containing a review of the legal issues associated with tax increment financing as related to development contributions. The Summary Conclusions section is quoted below:

"We conclude that Measure I does not expressly prohibit the application of redevelopment agency tax increment revenue toward the fair share contributions required under Measure I. We further conclude that there are legal arguments supporting its use subject to the limitations discussed herein. Moreover, it is our opinion that Measure I provides the legislative body of the Congestion Management Agency discretion to allow participating jurisdictions to apply alternate sources of revenue to satisfy their fair share obligations. Accordingly, to the extent the legislative body of the Congestion Management Agency determines that tax increment revenue is an allowable source of funds for development mitigation, we believe that the following conditions must apply. First, any tax increment to be applied to a local jurisdiction's fair share contribution must be identified with a specific parcel or parcels on which new development (as defined herein) has occurred. Second, the development financing mechanism of which the tax increment is to be a part, must comply, in all respects, with the Land Use/Transportation Analysis and Deficiency Plan provisions of the Congestion Management Program pursuant to California Government Code Section 65089, and third, the application of tax increment by a participating local jurisdiction toward the fair share contribution must be in accordance with all applicable provisions of the California Health and Safety Code.

"Alternatively, a local jurisdiction participating in the Measure I Development Mitigation Program may apply the proceeds of a loan of tax increment revenues from a redevelopment agency toward the fair share contributions required under Measure I, subject to repayment from an approved source as development occurs in the jurisdiction."

In summary, use of redevelopment agency tax increment as development share is allowable to the extent that it represents contributions from new development and adheres to the limitations and conditions referenced in the letter. Jurisdictions need to recognize that the revenue generated from new development within redevelopment areas may not represent as substantial a source of development contributions as may appear on the surface. Restrictions are attached to the use of the funds under laws governing redevelopment agencies. In addition, jurisdictions must submit information forecasting the amount of revenue to be generated through tax increment financing to establish compliance with the SANBAG CMP, similar to how jurisdictions submit updates to their Development Impact Fee programs. Thus, the use of redevelopment tax increment from new development may not appear as attractive once jurisdictions work through the associated restrictions and requirements. It is proposed that there be no change to the Strategic Plan policies at this time, given that there is no specific reference to the use of or limitations on use of redevelopment agency funds. Rather, it is proposed that this issue be resolved as part of the 2009 update to the Congestion Management Program, which is the more appropriate place for inclusion of specific language pertaining to the use of redevelopment agency funds as development contributions. Policy adjustments may be made to the Strategic Plan at a later time, if necessary. It should be noted that the Strategic Plan already allows for internal loans of funds to a jurisdiction's development mitigation account with no restrictions on source.

- Fontana desires to capture cost increases in the Project Advancement Agreements – Fontana is concerned that they are not able to recover the significant cost increases that have occurred on their projects covered by Project Advancement Agreements (PAAs). The impact to Measure I of amending Fontana's 10 existing PAAs to allow for the cost increases is estimated by Fontana at \$37 million. The impact on Measure I that would occur through amending the remaining 9 existing PAAs is unclear, but is likely small. Staff remains of the opinion that the PAAs were entered into with the full knowledge of the benefits and risks involved. Each executed agreement states: "Said reimbursement amount shall not exceed the percentage of actual cost as set forth in the SANBAG Nexus Study, up to _____ (amount varies by agreement, based on the project cost and development share percentage in the Nexus Study).... In the event that the project cost is higher than shown in the Nexus Study, the maximum amount eligible for reimbursement shall be _____ per the Nexus Study (same amount as referenced above)." In addition, in the April 5, 2006 Board agenda item approving the model PAA it was noted that any agency

that advanced a project with local funds would do so with the understanding that the reimbursement would include no interest.

- Rancho Cucamonga requests that a date earlier than April 5, 2006 be used for the threshold for expenditure eligibility - The date of April 5, 2006 had been established through a December 2008 Board action as the date prior to which expenditures under Project Advancement Agreements were determined to be ineligible for Measure I reimbursement. The same date was established by the Board in February 2009 as the threshold for Advance Expenditure Agreements. Because several jurisdictions expressed the desire for an earlier threshold date, Board members requested that staff examine the impact of such an action. The Rancho Cucamonga Haven Ave. widening project appears to be the only project that may have incurred significant expenditures prior to April 5, 2006 and following the approval of Measure I 2010-2040 by the voters in November 2004. Most of that project was completed prior to April 5, 2006. As a result of discussion at the March 9, 2009 CTP TAC meeting, staff is proposing a slight modification to policy PA-9 in the March 6, 2009 version of the Measure I 2010-2040 Strategic Plan. The proposed policy change for the Valley Project Advancement process is cited in Attachment 1 and states that "reimbursements shall not be made under the Project Advancement process for expenditures incurred prior to April 5, 2006 or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier." The language in Policies AE-6 and AE-13 (referring to the Advance Expenditure process) is also proposed for modification to be consistent with the language for PAAs. It should be noted that inclusion of 100% of the public share expenditures for the Haven Ave. widening project in a PAA would result in a delay in reimbursement of approximately 6 months for all other projects with PAAs in the Valley Major Street Program.
- Cost overruns for interchanges: would all jurisdictions share in the responsibility? - The frequency of cost overruns on construction phases should be rare, given that a 10% contingency is also being allowed. If an overrun occurs, the responsibility for cost overruns would be shared among participating jurisdictions according to the relative shares of interchange development share responsibility. The sponsoring agency would be responsible for collecting the appropriate amounts from the other participating jurisdictions. Clarification of this policy is provided in Attachment 1.
- Interchange development fair share percentages – SANBAG staff circulated a proposal by the City of Ontario to require minority share jurisdictions to forward development fees collected for specific interchanges to the sponsoring agency as the fees are collected. No

additional comment was received from Board members on this proposal. Interest was expressed by Fontana to continue pursuing the interchange fair share consolidation proposal developed by SANBAG staff. For purposes of the action proposed here, the Strategic Plan has not been changed, and the burden rests with the sponsoring agency to coordinate the commitment of the development fair share amounts.

One other issue that has been raised is whether the 30-year revenue estimate of \$7.25 billion used in the Measure I 2010-2040 Strategic Plan remains valid in light of the economic downturn. Recent evaluation of the Measure I revenue stream by the SANBAG Finance Department indicates a forecast for FY 2009/2010 of approximately \$118 million, down from a peak of \$147 million in FY 2006/2007. Preliminary analysis has been conducted by SANBAG staff of the potential impact of this significant reduction, suggesting that use of a significantly lower 30-year Measure I revenue estimate would be more realistic given the current economic climate and given its impact on the revenue stream for subsequent years. At the same time, it is also known that construction costs are declining significantly as well. These recent declines are not yet fully reflected in the Caltrans construction cost indices. Rather than attempt to reflect these changes in an update of the financial data in the Strategic Plan, staff recommends that the financial data in the draft Strategic Plan be retained. More detailed financial analysis will be undertaken as the effort shifts from the Strategic Plan to project-level delivery plans in the coming months and as the issuance of bonds is considered.

The revised Strategic Plan has been prepared reflecting the responses to comments. The edited Strategic Plan is available on the SANBAG website at www.sanbag.ca.gov. A link is provided on the website home page to enable downloading of all or a portion of the Strategic Plan. The revised Strategic Plan was also distributed at the March 9 CTP TAC meeting. A clean version of the Strategic Plan (i.e. without showing the markup and including foldout color maps) will be distributed to Board members within approximately two weeks following Board approval on April 1.

Communications with the County of San Bernardino and discussions with the CTP TAC subsequent to the distribution of the March 6 revision of the Strategic Plan have resulted in several proposed modifications to Strategic Plan policies. One of these revisions has already been referenced above, regarding the April 5, 2006 threshold date for reimbursement of expenditures under the Project Advancement and Advance Expenditure processes. Other proposed modifications include:

- Policies PA-11 and AE-12, regarding reimbursement for in-house staff time – These policies also need to apply to the Valley Freeway Interchange, Valley Major Street, and Mountain/Desert Major Local Highways Programs and will be added. See Attachment 1.
- Policies VFI-5, VMS-7, VMS-42, VVMLH-12, MDMLH-10 allow for advanced reimbursement of anticipated large expenditures, on an exception basis, for the Valley Freeway Interchange, Valley Major Street, Victor Valley Major Local Highways, and Rural Mountain/Desert Major Local Highways Programs. The purpose of these policies is to reduce the cash-flow burden on local jurisdictions when they are faced with larger expenditures during right-of-way acquisition and construction. Greater specificity was added to these policies in the March 6 revision. The request of the TAC was to lower the \$10 million threshold for construction contracts to \$5 million for the Valley Major Street, Victor Valley Major Local Highways, and Rural Mountain/Desert Major Local Highways Programs. The ability of SANBAG to approve advanced reimbursements will depend on SANBAG's own cash flow situation whenever the request is made. See Attachment 1.
- Subsequent to the modifications listed in the prior bullet point, County staff requested that SANBAG further modify Policies VMS-42 (Valley Major Street Program) and VVMLH-12 (Victor Valley Major Local Highways Program) to provide 100% of the project costs at time of contract award, in advance of incurring construction expenses, for projects costing up to \$5 million. Most of these are believed by County staff to be shorter turn-around projects of 2-6 months in construction duration. SANBAG staff has exchanged information with County staff on that recommendation. SANBAG staff's view is that fronting the cost of all the projects in the Major Street Program that are less than \$5 million would be a significant cash flow challenge to the agency. Strategic Plan policies commit to a 30-day reimbursement period upon receipt of invoice, and this should keep the cash flow impact to local jurisdictions at a minimum, given that there is also a time lag in jurisdictions paying their consultants/contractors. The annual SANBAG apportionment process and cash management strategy will be used to ensure that this 30-day commitment can be kept. If additional fronting of SANBAG's share of project costs were to occur, the result would be reduced apportionments and/or delays to other projects. This is a particularly difficult request given the current volatility in SANBAG's financial picture with the economic downturn, potential bonding needs, etc. The Board could always make exceptions to the policy to deal with extenuating cash-flow situations that arise. In addition, a change to the policy can be considered at some date in the future as SANBAG's financial commitments under the

new Measure become clearer. Staff believes that there are too many uncertainties to make the requested commitment in policy at this time.

- The County of San Bernardino also requested that development fee requirements be waived for the first five years of Measure I 2010-2040 to help create jobs and stimulate the economy. It was pointed out by SANBAG staff that policies contained in the Strategic Plan already allow for local jurisdiction expenditure of the “unreserved portion” (i.e. the portion that does not require the matching development share) of a jurisdiction’s equitable share of funds under the Valley arterial sub-program (see Policy VMS-40). If apportionments to the Valley Major Street Program allow, a jurisdiction may get up to five years ahead of its projected equitable share of arterial sub-program funds (Policy VMS-35). However, there is no assurance that this level of funding will be available to a jurisdiction, given that apportionments must be evaluated year-by-year in light of SANBAG’s cash flow needs and constraints.
- Another issue discussed by the TAC is the extent to which project oversight costs, either for in-house staff or for consultants acting as staff oversight, are eligible for reimbursement under the Valley Freeway Interchange or Valley Major Street programs. In both the December 4, 2008 draft and the March 6 revision, policies allow no reimbursement for project oversight costs. As a result of the discussion at the March 9 CTP TAC meeting, it is proposed that the public share of project oversight costs (i.e. costs not directly contributing to a Nexus Study project deliverable) be reimbursed up to 2 percent of the public share of each invoice received by SANBAG for projects in the Valley Arterial Sub-program, but not for the Valley Freeway Interchange Program or the Valley Rail/Highway Grade Separation Sub-program. A revision to Policy VMS-49 is proposed in Attachment 1. It should be noted that arterial projects covered by Project Advancement Agreements or Advance Expenditure Agreements would also be eligible for recovery of oversight costs. In-house expenses will need to be documented per requirements in the Strategic Plan. Agencies will need to ensure that the oversight costs are included in their Nexus Study cost estimates so that the costs can also be included in the fee programs. This policy change is not recommended for the Valley Freeway Interchange Program or Valley Rail/Highway Grade Separation Sub-program because a commitment to reimburse oversight costs will reduce the amount of funding available to construct other projects in these programs. SANBAG staff believes it would be unfair for jurisdictions with lower priority interchange or grade separation projects to have their projects significantly delayed or deferred because of a commitment of additional reimbursement (i.e. for oversight costs) to jurisdictions with projects higher in priority. Local jurisdiction sponsors

need to weigh the resources they have for project oversight prior to requesting an allocation of Measure I funding. This potential inequity is not an issue for the Valley Arterial Sub-program since each jurisdiction is guaranteed to receive its "equitable share" over the life of the Measure. Any additional expense on project oversight will merely reduce the amount available to that same jurisdiction for other projects. No jurisdictional inequity is involved. Documentation of project oversight expenditures in invoicing to SANBAG must be consistent with Measure I policy.

- One technical correction is recommended in Policies VS-30 and VVMLH-27. The word "local" should be deleted from the first line in each of these policies. The policy is intended to apply to only State, federal, or private funds, and all the examples included in the policy are within one of these three categories.

Approval of the Strategic Plan and the policy revisions in Attachment 1 is requested. It is also recognized that the Strategic Plan will be a living document, with updates to be provided periodically. No specific update schedule has been established.

Board members are requested to bring to the April 1 Board meeting the copy of the Measure I 2010-2040 Strategic Plan received in the March committee agendas. If an additional copy is needed, one may be obtained by contacting Joanne Cook at (909)884-8276 or by downloading a copy from the SANBAG website at www.sanbag.ca.gov.

Financial Impact: This item has no financial impact. However, the Strategic Plan, once approved, will serve as the guide for the allocation of Measure I 2010-2040 dollars for many years to come. The item is consistent with the approved Fiscal Year 2008-2009 SANBAG budget, Task 60909000.

Reviewed By: This item was approved by the Major Projects Committee on March 12, Plans and Programs Committee on March 18, Commuter Rail Committee on March 19, and Mountain/Desert Committee on March 20. The item was updated for the Board agenda based on subsequent discussions.

Responsible Staff: Steve Smith, Chief of Planning
Ryan Graham, Transportation Planning Analyst
Ty Schuiling, Director of Planning and Programming

Attachment 1
Proposed Policy Revisions Subsequent to the March 6, 2009 Version of the
Measure I 2010-2040 Strategic Plan

Notes:

- 1) Only the portions of the policies affected by the proposed change are quoted**
- 2) Part 1 of the Final Strategic Plan will be revised to be consistent with the policy language modifications proposed below**

Revision to Policy PA-9 (to allow for reimbursement of costs incurred under the PA program as far back as when a jurisdiction received approval of its development mitigation program by SANBAG)

Current language: *Expenditures incurred prior to April 5, 2006 (the date when the model agreement for the Project Advancement process was adopted by the SANBAG Board of Directors) shall not be reimbursed.*

Proposed language: *Reimbursements shall not be made under the Project Advancement process for expenditures incurred prior to April 5, 2006 (the date when the model agreement for the Project Advancement process was adopted by the SANBAG Board of Directors) or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier.*

Revision to Policy AE-6 (to allow for reimbursement of costs incurred under the AE program as far back as when a jurisdiction received approval of its development mitigation program by SANBAG)

Current language: *For freeway interchanges and railroad/highway grade separation projects, AE agreements executed prior to April 1, 2010 may include reimbursement or credit for eligible project expenditures incurred prior to the execution of the agreement but no earlier than April 5, 2006....*

Proposed language: *For freeway interchanges and railroad/highway grade separation projects, AE agreements executed prior to April 1, 2010 may include reimbursement or credit for eligible project expenditures incurred prior to the execution of the agreement but not prior to either April 5, 2006 or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier*

Revision to Policy AE-13 (to allow for reimbursement of costs incurred under the AE program as far back as when a jurisdiction received approval of its development mitigation program by SANBAG)

Current language: *The following types of projects in the Valley Major Street Arterial Sub-program are eligible for reimbursement of public share costs under the AE process:*

- *Nexus Study project costs incurred after April 5, 2006 but prior to the commencement of Measure I 2010-2040 and not covered under the PA process mentioned above....*

Proposed language: *The following types of projects in the Valley Major Street Arterial Sub-program are eligible for reimbursement of public share costs under the AE process:*

- *Nexus Study project costs that are: 1) incurred prior to the commencement of Measure I 2010-2040, 2) not covered under the PA process mentioned above, and 3) not incurred prior to either April 5, 2006 or prior to the date of approval of a jurisdiction's development mitigation program by SANBAG, whichever is earlier....*

Revision to Policy VMS-7 (to lower the threshold for advanced reimbursement for projects in the Arterial Sub-program to \$5 million)

Current language: *On an exception basis and subject to SANBAG Board approval, the advanced reimbursement of anticipated expenses may be permissible. Only the right-of-way and construction phases are eligible and are subject to the conditions stated below.*

- *Right-of-way: Only right-of-way transactions in excess of \$500,000 shall be considered for advance reimbursement. The advanced reimbursement shall be based on an accepted written appraisal or sales contract. Adjustments to this estimate based on actual costs shall be reconciled with SANBAG within 30 days of close of escrow and subject to the provisions governing right-of-way purchase established in Policy VMS-23.*
- *Construction: The advanced reimbursement shall be based on an awarded construction contract in excess of \$10,000,000. The amount to be advanced to the local jurisdiction shall not be greater than 10% of the public share of total project cost or of three months estimated peak burn rate for the project, whichever is less. The advanced reimbursement shall be used to help provide liquidity to the local jurisdiction for payment to the contractor and shall be reconciled at the end of the construction phase of the project. SANBAG shall reimburse jurisdiction invoices, in addition to the advanced reimbursement amount, until the public share amount remaining in the contract is equivalent to the advanced reimbursement, after which the advanced reimbursement shall satisfy SANBAG reimbursement requirements.*

Proposed language: Modify the first sentence in the second bullet to read - *The advanced reimbursement shall be based on an awarded construction contract in excess of \$5,000,000.*

Revision to Policy VFI-31: (to specify the sharing of responsibility for construction cost overruns)

Current language: *Jurisdictions shall bear full responsibility for construction cost overruns, which are defined as any amount in excess of the total cost of the accepted bid and contingencies up to 10% of the construction bid. On an exception basis, SANBAG and the lead agency may agree to the modification of the project scope, and the jurisdiction may be reimbursed for the public share of the additional costs pursuant to an amendment to the Project Funding Agreement. The private share of any cost overrun or project cost increment associated with a project shall be shared by all jurisdictions responsible for the project at the rates identified in the Nexus Study.*

Proposed language: Add the following language after the second sentence - *Jurisdictions shall share construction cost overrun expenses in proportion to the shares of development mitigation responsibility specified in the Nexus Study.*

Revision to Policy VMS-49: (to allow for reimbursement of project oversight costs in the Valley Arterial Sub-program)

Current language: *The following costs are ineligible for reimbursement from the Arterial Sub-program:*

- *Additional environmental or architectural enhancement not required as part of the mitigation established in the environmental document(s) prepared for a project.*
- *Project oversight costs, with the exception of construction support costs*

Proposed language (revision of last bullet)

- *Project oversight costs in excess 2% of the cumulative invoice amount, with the exception of construction support costs. Project oversight costs for in-house or consultant staff must be included*

in Nexus Study project costs and be supported by the necessary documentation in the invoice package.

Revision to Policies VS-30 and VVMLH-27: (to make a technical correction – should have excluded reference to local funds)

Current language: *State, federal, local, or private funds may be used to buy down either the total cost of a project, the public share of the project cost, or the development share of the project cost based on the following criteria:*

Proposed language: Delete the word “local” from the first line.

Page IV-55 of Part 1 of the Strategic Plan: Supplement Figure IV-9 with a new table entitled “Measure I 2010-2040 Victor Valley Subarea Major Local Highways Candidate Project List.” The purpose of the table is to provide additional clarification of the projects on the candidate list. The table was included in the website copy of the March 6 version of the Strategic Plan, but not the version that went to the SANBAG committees. The table is attached.

Figure IV-10
Measure I 2010-2040 Victor Valley Subarea
Major Local Highways Candidate Project List

<i>Interchange Projects</i>	<i>Sponsoring Agency</i>
Ranchero Interchange	Hesperia
Joshua / Muscatel Interchange	Hesperia
Mojave / Smoketree Interchange	Victorville
Eucalyptus Interchange	Hesperia
Bear Valley Interchange	Victorville
La Mesa / Nisqualli Interchange	Victorville
High Desert Corridor Interchange	Victorville
<i>Arterial Projects</i>	<i>Sponsoring Agency</i>
Green Tree Extension (Hesperia Rd to Yates Rd)	Victorville
Yates Rd (portion of Yucca Loma Bridge project)	County of San Bernardino
Yucca Loma Bridge & widen Yucca Loma Rd to Apple Valley Rd	Apple Valley
Yucca Loma Rd (Apple Valley Rd to SR-18)	Apple Valley
Apple Valley Rd / SR-18 Realignment	Apple Valley
El Mirage Rd (US-395 to Koala Rd)	Adelanto
Colusa Rd (Adelanto Rd to Helendale Rd)	Adelanto
Adelanto Rd (Colusa Rd to US-395)	Adelanto
Rock Springs Rd Bridge at Mojave River	County of San Bernardino
Rock Springs Rd (Hesperia City Limits to Deep Creek Rd)	County of San Bernardino
Deep Creek Rd (Bear Valley Rd to Tussing Ranch Rd)	Apple Valley
Central Rd (SR-18 to Tussing Ranch Rd)	Apple Valley
Ranchero Rd (7 th to Mariposa Rd)	Hesperia
Helendale Rd	County of San Bernardino
Summit Valley Rd	County of San Bernardino
Phelan Rd (Sheep Creek to SR-138)	County of San Bernardino
<i>Grade Separation Projects</i>	<i>Sponsoring Agency</i>
Vista Rd Grade Separation	County of San Bernardino
<i>Existing State Highway Projects</i>	<i>Sponsoring Agency</i>
SR-138 (project development)	Caltrans
I-15 (project development)	Caltrans
SR-18 (Apple Valley Rd to Tao Rd)	Apple Valley
US-395 (Palmdale Rd to Bartlett Ave)	Caltrans
SR-18 (US-395 to Baldy Mesa Rd)	Caltrans
SR-18 (Lucerne Valley)	County of San Bernardino
<i>New Corridors</i>	<i>Sponsoring Agency</i>
High Desert Corridor (East of US-395, right-of-way)	Victorville
High Desert Corridor (West of US-395, project development)	County of San Bernardino